16-399

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~593.~~ 298

WILLIAM L. HEMINGWAY, TREASURER OF THE STATE OF MISSISSIPPI, SYLVESTER GWINN, AUDITOR OF PUBLIC ACCOUNTS OF SAID STATE, AND EX-OFFICIO THE LEVEE BOARD OF MISSISSIPPI, DISTRICT No. 1, APPELLANTS,

vs.

JEPTHA W. STANSELL, SURVIVING PARTNER OF THE LATE FIRM OF PARTEE & STANSELL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 4, 1880.

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No. 593.

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a United States district court, northern district of Mississippi.

Proceedings had in the district court of the United States for the northern district of Mississippi, begun and held for its December term, A. D. 1873, at the court-house, in Oxford, Miss., on, to wit, the 23' day of February, 1873, and days subsequent thereto, in the following cause: Partee and Stancell vs. Levie Board of Miss., Dist No. 1, & others.

LEVEE BOARD OF MISS., DIST. NO. 1, & OTHERS, appellants,
against
PARTEE & STANCELL, APPELLEES.

H. P. Branham, of Oxford, Miss., sol. for appellants, and H. T. Elliott, of Memphis, Tenn., sol. for appellees.

1 UNITED STATES OF AMERICA,
Northern District of Miss.:

In the district court of U. S. for said district, sitting in equity.

To the Hon. R. A. Hill, judge in and for the said district:

Hiram A. Partee, of Memphis, and a citizen of the State of Tennessee, and Jeptha W. Stansell, of Helena, and a citizen of the State of Arkansas, bring this their bill against the "The Levee Board of the State of Mississippi, District Number One," a corporation created by an act of the legislature of the State of Mississippi, and having its domicil at the county seat of Tunica County, in the said State, and against Milton S. Alcorn, of the county of Coahoma; John McCann, of the county of Tunica; Robert Cocke, of the county of De Soto; William W. Howe, of the county of Panola, and Jeremiah Robinson, of the county of Tallahatchie; the said Alcorn, McCann, Cocke, Howe, and Robinson, all being citizens of the State of Mississippi. And thereupon your orators complain and say that the said defendant the "Levee Board of the State of Mississippi, District Number One," was created a body politic and corporate, by that name and style, by act of the legislature of said State, approved May 17th, 1871, to consist of five members called "levee
2 commissioners," one from each of the counties of Tunica, Coahoma, De Soto, Panola, and Tallahatchie, to be chosen by the board of supervisors of said counties, respectively, and they charge that the other defendants above named are members of said board.

Your orators state that the said board was invested by said act with full power to construct, repair, and maintain a levee along the Mississippi River from the State of Tennessee to the southern boundary of the said county of Coahoma, and to rebuild, strengthen, and elevate the old levee or parts thereof, so as effectually to protect and reclaim the land in the district designated by said act from overflow by waters of the said river, and to make all needfull rules and regulations, and to do all acts they might deem necessary to carry into effect the objects and purposes of said act, with power expressly given to let out such work or parts thereof, and cause the same to be done by contract or otherwise as they might deem proper. To provide the necessary means to build said levee and to carry out the objects and purposes of the

act, a uniform charge and assessment of two per cent. per annum for twelve successive years on the value of every acre of unimproved and improved lands and cultivated lands in said "levee district" was thereby fixed, levied, and made to continue and be collected in each and every year for the said period of twelve years. And the said board was further authorized to borrow money and to issue bonds to the amount of one million of dollars, payable in not less than two and not
3 more than ten years after January 1st, 1871, to bear interest not exceeding eight per cent. per annum, with coupons attached, which bonds were authorized to be sold and negotiated in any market in or out of said State on the best terms that could be obtained for the same, but not to be negotiated or sold at a greater discount than ten per cent.

And your orators show that the said levee board, in pursuance of the power conferred by said act, proceeded to advertize for bids of contractors for performing the work required to accomplish the objects of said act; and that your orators, on the 27th day of September, 1871, did propose in writing to the said board and offer to contract for the levee work to be let in the said district, on the following terms, to wit: For work to be done at the Yazoo Pass, at the rate of sixty five cents per cubic yard, and for work to be done at Delta, Flower Lake, Shelby Ridge, and Port Royal at the rate of forty-five cents per cubic yard, all clearing to be paid for at the rate of thirty dollars per acre, and grubbing at the rate of fifteen dollars per acre, and did thereby propose and agree to receive in payment for said work the bonds of said board issued under the said act running from January 1st, 1873, to January 1st, 1881, at the rate of ninety cents in the dollar, or at ten per cent. discount.

Your orators further say that their said bid was accepted by the said board on the same day, and that a written contract was accordingly drawn up an' executed by and between your orators, as
4 parties of the first part, and the said levee board, of the second part, which agreement bears date the 28th day of September, 1871; and thereby your orators, in consideration of the payments and covenants therein mentioned to be made and performed by said levee commissioners, did covenants and agree to construct and finish, in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners, all the graduations and such other work as might be required, on Flower Lake levee, in Tunica County, Mississippi; also the pass on the Yazoo Pass levee, in Coahoma County, Mississippi; also the Shelby Ridge and Port Royal levee, in Coahoma County, Miss.; and also the Delta levee. The said work to be finished as described in the specifications and agreeably to the directions from time to time of the chief engineer, on or before the following times, to wit: The Yazoo Pass levee, in Coahoma County, to be finished on or before the tenth of December, A. D. 1871; the Delta levee, in Coahoma County, on before the first of Jan., A. D. 1872; the Port Royal levee, in the same county, on or before the first of January, A. D. 1872; the Flower Lake levee, in Tunica County on or before the first of Feb'uary, A. D. 1872; the Shelby Ridge levee, in Coahoma County, on or before the first of Feb'uary, A. D. 1872. And the said party of the second part did thereby agree to pay to the parties of the first part, for the work above enumerated, the following price per cubic yard, in bonds at the rate of ninety cents in the dollar: For the Flower Lake levee, forty-five cents per cubic yard;
5 for the Yazoo Pass levee, sixty-five cents per cubic yard; for the

Delta levee, forty-five cents; for the Shelby Ridge levee, forty-five cents per cubic yard; for the Port Royal levee, forty-five cents per cubic yard. All estimates to be made monthly, and bonds issued in accordance with the estimates when made.

Your orators further agree to commence active operations on the Yazoo Pass and Delta levees on or before the fifteenth of October, 1871, and the said levee board did thereby agree to pay for all sinkage. Your orators not to be held liable for unavoidable causes.

Your orators state that said contract was not executed in duplicate, and that the original was retained by the said levee board, and is in the custody of their secretary, beyond your orators' reach. They several months ago applied to said board for a copy of the contract and specifications, and were furnished by the secretary with what purports to be a copy of contract alone without the specifications. They have no reason to doubt that the same is a correct copy of the contract, and they file the same herewith, marked Exhibit A, and make the same a part of this bill. They have no means of proving whether the same is a true copy of the original but by a discovery of the said defendants, and they pray that the said levee commissioners, who have personal knowledge of the facts, may be required individually to discover and produce the original contract and specifications for the inspection of your orators. Or if the same has been lost or destroyed that they discover and state its contents, and whether Exhibit A is a true copy of the contract.

6 Your orators state that they have recently, through their solicitors, applied to the secretary of said board for a fuller copy of the said contract with the specifications, and, though ample time for a reply has elapsed, no notice has been taken of their application. They are therefore unable to present even the substance of the said specifications at large, but they aver and say that it was expressly provided in the said specifications that all the said work should be completed in accordance with the directions, and to the satisfaction and acceptance of the chief engineer of said board, whose duty it was, when the work was completed, to make a final estimate of the quality, character, and value of the work according to the terms of said agreement, and that the balance appearing by said estimate of said engineer to be due to your orators should then be paid to them upon their giving a release under seal to the said levee commissioners from all claims or demands whatsoever growing in any manner out of the said agreement, and it was also thereby further provided and mutually agreed and distinctly understood that the decision of such chief engineer should be final and conclusive in any dispute which might arise between the parties to the agreement relative to or touching the same. And each party waived all right of action, suit, or remedy in law or otherwise by virtue of said covenants so that the decision of the chief engineer should, in the nature of an award, be final and conclusive on the rights and claims of said parties.

Your orators further state that a contract similar in all respects to the foregoing was at the same time awarded to E. A.

7 Lindsley by the said board for construction and repair of the levee at Willow Lake, in said county of Coahoma, to be paid for in bonds at the same rate as provided in the aforesaid contract with your orators, and that the said last-mentioned contract was transferred by said Lindsley to your orators, and your orators were accepted by the said levee board as contractors in the place of said Lindsley, and substituted to all his rights and liabilities un-

der said contract. The said last-mentioned contract is in the hands of said board, and your orators are without means to prove the same. Your orators further state that, immediately after the execution of the said contracts they entered upon the performance of the *the* work contemplated thereby. That they commenced active operations on the Yazoo Pass and Delta levees before the 15th of October, 1871, and completed all the work embraced in said contract within the times stipulated therefor, or as extended by consent and agreement of said levee board. They state that all said work was done and performed in the most substantial and workmanlike manner, to the entire satisfaction and acceptance of the chief engineer, for the time being, of the said levee board, and in strict accordance with his directions given from time to time as the work progressed. They state that monthly estimates were made by the said engineer during the progress of the work of the relative value of the work done, and upon his certificate of the amount audited by the president, and countersigned by the secretary of the board, four-fifths of the amount of said estimate were paid to your orators in the bonds of said board, as stipulated in the contract, and
8 that when the whole work was completed in the manner above stated, and accepted by the said engineer, a final estimate was made by him of the quality, character, and value of said work, distinguishing and keeping separate the work done on the several parts or portions of said levee, as designated in the said contract, and the said final estimate was delivered by the said engineer to the said levee board, and retained by them in their possession. No copy of said final estimate was ever delivered to your orators, nor have they ever had the original, but the said engineer gave out to your orators the aggregate number of cubic yards of embankment contained in the work done on each of the said parts or portions of said levee, which amounts were written down at the time by your orators as the figures were given out to them by the said engineer, and were as follows, to wit, for work, embankment, and muck ditch:

Flower Lake	cubic yards	..	261,500
Willow Lake	"	" ..	190,000
Shelby Ridge	"	" ..	220,000
Port Royal	"	" ..	44,800
Yazoo Pass	"	" ..	96,000
Gordon Break (part of Yazoo Pass)	"	" ..	51,000
Part of Yazoo Pass, between Gordon Break and Delta, work done by subcontractors Kane and Kane			35,000

Your orators, also, by directions of the said chief engineer, performed other labor on the old levee, between the Yazoo Pass and Gordon Break, in repairing, raising, and widening the same to the amount of
9 fifteen thousand cubic yards, at the rate of sixty-five cents per yard, for which the said engineer made no estimate, as the same was not completed until after the said engineer left the employ of the said board, but the said board had full notice and knowledge that your orators were doing the said work, and approved the same, and accepted the said work, and have full knowledge of the amount and value thereof.

Your orators shew that the original estimate of the said chief engineer, from which the foregoing figures were given out, was delivered by said engineer to the said board, and is in their possession or under their control, unless they have lost or destroyed the same. Your orators requested the said engineer, on the day the said final estimate was pre-

sented to the board, to give them a copy of the same, but the said engineer did not furnish it, alleging want of time to make said copy. They have also applied to the said board for a copy thereof, but have been put off from time to time on various pretexts. Your orators state that the said engineer has removed to a distant State, where it will be difficult, if not impossible, to obtain his testimony, and your orators have no convenient means of proving the contents of said estimates. They aver that the said individual members of said board have personal knowledge of the contents of said final estimate, and they pray that said defendants may be required to produce the original, or discover and state whether the foregoing is not a true statement of the contents or the substance thereof. Your orators shew that, relying on the
10 correctness and the conclusive character of the said monthly and final estimates, they settled with their subcontractors and employees upon the footing thereof, and paid them for the amount of work as stated and shewn by said estimates.

They also shew that the said estimates did not embrace any estimate of the amount due your orators for clearing land, for grubbing, or for sinkage. They shew that they cleared and grubbed in the construction of the Flower Lake levee sixty-six and three-tenths acres of land; in the Willow Lake levee twenty-five acres; in the Yazoo Pass levee thirteen and seven-tenths acres; between the Yazoo Pass and Delta fourteen acres; in the Shelby Ridge levee seventy-one acres, and in the Port Royal levee ten acres, making and aggregate of two hundred acres, which, at thirty dollars per acre for clearing and fifteen dollars per acre for grubbing, amounts to nine thousand dollars. They further shew that they were entitled to be allowed and paid for sinkage on the Flower Lake levee five thousand cubic yards; on the Willow Lake levee eleven thousand yards; on the Yazoo Pass levee twenty thousand cubic yards, and on the Shelby Ridge levee five thousand cubic yards, which ought to be added to the said final estimate of the total number of cubic yards of embankment and muck ditch. Your orators show that for the work done on the said Flower Lake, Willow Lake, Shelby Ridge, and Port Royal levees, amounting, with the foregoing ad'itions for sinkage, to 737,300 cubic yards, they were and are entitled
11 to be paid at the rate of forty-five cents per cubic yard, amounting in the aggregate to the sum of $331,785.00, payable in bonds of said board at the rate of ninety cents on the dollar. They show that for the residue of said work due on Yazoo Pass, Gordon Break, and between the pass and Gordon Break, and between Gordon Break and Delta, all of which belongs to and forms a part of the Yazoo Pass levee, as designated in said contract, and amounting in all, with the aforesaid addition for sinkage, to 217,000 cubic yards, your orators are and were entitled to be paid at the rate of sixty-five cents per cubic yard, amounting to the sum of $141,050.00, payable as aforesaid.

And they show that they were also entitled to the further sum of nine thousand dollars ($9,000) for clearing and grubbing two hundred acres of land, as above stated. The aggregate amount of all the work done by your orators, for which they were entitled to be paid under said contract, thus being $481,835.00.

They further say that during the progress of the work they received from the said levee board on account thereof, upon the monthly or other partial estimates of the chief engineer, the nominal amount of three hundred and one thousand dollars in bonds, which, at ninety cents on the dollar, made the total payment and credit on the said work amount to two hundred and seventy thousand nine hundred dollars, and left

due and unpaid your orators, at the time of the acceptance and final estimate of said work, the sum of two hundred and ten thousand nine hundred and thirty-five dollars, which ought to have been promptly
12 paid them by the said levee board.

And your orators well hoped, after the prompt and faithful manner in which they had performed the said contract on their part, and the investment of a large amount of means and credit in the work, that the said levee board would have faithfully performed the said contracts on their part, and would have paid your orators the amount due them as aforesaid, as your orators earnestly requested them to do, and as in justice, equity, and good conscience they ought to have done. But so it is that your orators have been greatly disappointed in this reasonable expectation; on the contrary the said defendant, having obtained all the benefit of the capital and labor of your orators in the erection of expensive levees to protect their lands and homes from overflow, then refused to perform the said contracts on their part, and refused to deliver to your orators the bonds of said board, as stipulated in said contract, or to pay to your orators in any other way the balance due them as aforesaid, but falsely pretended that their engineer had committed errors in favors of your orators in the estimates made by him, monthly or partial, and final, as aforesaid. Work that had been executed under the inspection of their engineer and according to his direction, and which had been *been* accepted by him as sufficient and satisfactory, was pronounced insufficient by said board, and, long after your orators had removed their hands, with their shanties and
13 material, they were required to go back, at great loss and expense, and bring said work up to the demand of said board by giving greater height and breadth to the levee. These unjust and oppressive requirements your orators complied with, hoping to avoid trouble and to get a fair settlement with said board; but the said board employed a new engineer, after said work had all been done and accepted by said chief engineer, and caused false estimates to be made of said work, greatly below the true amount that had been done, and refused to make any payment, even on account of the large ballance which they admitted to be justly due to your orators, according to their new and false estimate, unless your orators would execute to them a release of all claims and demands under the said contract. Your orators show that this conduct on the part of said board was in the highest degree illegal, unjust, and oppressive. Your orators had finished their contract, and had a large number of subcontractors, assistants, and laborers, waiting for payment for their labor.

Your orators could not discharge them without payment, and were obliged to have money for that purpose. Their only reliance to raise money was upon the bonds that were due to them. Knowing these facts, and that they could compel your orators to comply with any exactions, however oppressive and unjust, the said levee board fraudulently and unlawfuly took advantage of your orators' condition and demanded the execution of said release as a condition of making
14 any payment on said contracts, although they admitted a large amount to be due. Your orators remonstrated against this injustice, and represented to the board that such a release, extorted under such circumstances of oppression without actual payment of the amount really due, would be void and of no effect, and begged them at least to deliver, without condition, the bonds which they admitted to be due, so that your orators might therewith raise the means to pay off their contractors and laborers, who were dependent upon receiving the

amounts due them to preserve themselves and families from suffering and distress. But the said board insisted on their advantage, and your orators were forced, as a condition of receiving any portion of their dues, to agree to sign a release for the balance. The said board thereupon caused some instruments of acquittance or release to be drawn up, the terms of which your orators cannot state, nor whether it is valid on its face, which your orators signed, protesting at the time that they did so from necessity and not of free will, and declaring that the same was without consideration and not binding on your orators, and asserting their intention to resort, if necessary, to the courts of justice for redress against it. The said board thereupon delivered to your orators their bonds to the nominal amount of eighty-six thousand eight hundred dollars, which at ninety cents on the dollar amounted to seventy-eight thousand one hundred and twenty dollars, leaving still justly due your orators a balance of one hundred and thirty-two thousand eight hundred and fifteen dollars in money, or one hundred and forty-six thousand and ninety-six dollars in bonds.

Your orators insist that the said pretended instrument of release or acquittance is wholly void, and is no bar to the recovery of the balance due as aforesaid, being without consideration, and extorted by oppression and wrong, under circumstances that deprived your orators of any freedom of action.

And your orators deny, so far as they know or believe, that there was any error in favor of your orators in any of the said estimates, partial or final, made by the said chief engineer, whose name was W. R. Kirkpatrick; but they believe, and so charge, that the same were fair and accurate. At all events, they were accepted as such by your orators, who were bound by their contract to do so, and they acted upon and conformed to them in all their settlements with and payments to their subordinates. And they insist that the estimates and acts of their own chief engineer are made by the te'ms of the said contracts equally binding upon both parties, and are in the nature of an award, final and conclusive on the rights and claims of both parties. Even if errors had been committed, your orators insist that they cannot be corrected except by mutual consent, especially when they have been acted upon by one of the parties, so that such party cannot be put back in his original position before the errors were committed.

And your orators further show that the said defendants have since, in effect, conceded that said acquittance or release was null and void, and have waived and abandoned the same. The said instrument was signed and the last payment made as aforesaid on or about the 28th day of June, 1872; and from that time your orators, on every opportunity, continued to urge upon the said levee board the injustice of their said proceeding, and demanded and insisted that the said board should pay the balance remaining due to them as aforesaid; and at length, by persistent argument and remonstrance, they succeeded in inducing the said board to agree to terms of settlement, to which, though far short of doing justice to your orators, and really oppressive in their character, your orators acceded, as the best said board could be prevailed upon to do. Accordingly, an article of agreement was entered into on the 4th day of October, 1872, between the said board and your orators, under the hands and seals of the parties, in and by which, after refer'ing to the said pretended settlement, and reciting that your orators complained that injustice was done them, and that it was the desire of the said board to do justice to all men, it was agreed that your orators should designate an engineer who should proceed with the chief engineer

of said board to measure all work done by your orators on said levees, and render to the parties an estimate of the amount due your orators for such work according to the contracts, and that should said estimate exceed the estimate made by the special engineer of said board in
17 June, 1872, the said board should pay to your orators the amount of such excess, and all the expenses of the measurement should be borne by said board; but if the said estimate should be less than the estimate of the said special engineer in June, 1872, then your orators should refund to said board the amount of such deficit, and pay all the expenses of the measurement.

And it was further thereby agreed that your orators should deposit in the First National Bank of Memphis twenty-five thousand dollars of the bonds of said levee district No. 1, in trust for the payment of said deficit and expenses in the event that said estimate should fall short of the estimate of the said special engineer. And it was further thereby agreed that your orators should designate an engineer, which engineer should suggest a third engineer, who should be acceptable to the chief engineer of said board, and that the engineers so selected, with the chief engineer of the board, constitute a board of arbitrament, for the adjustment of all questions of difference, the agreement of any two to be final. And it was further thereby agreed that in the adjustment of questions pertaining to said measurement, your orators should have the privilege of introducing all proper evidence, oral or written, of notes, profiles, and other evidence, which testimony might be rebutted by the president of said board, the said testimony being allowed to give the engineers information as to the files or any other fact not perceptible to the engineers, who should give such weight to the testimony
18 as they might think the same entitled to. Your orators file the said last-mentioned agreement herewith, marked Exhibit B, and make the same a part of this bill.

Some of the disadvantages under which your orators labored in the said arbitration will be appreciated from the fact that the chief engineer of the said board, who was forced in as one of the arbitrators, was the same person who as a special engineer of said board, in June, 1872, made the erroneous and false estimate complained of, and which gave rise to the controversy, and who immediately after making the said erroneous and false estimates, was promoted to the position of chief engineer, which he still holds. Nevertheless your orators accepted the said conditions, hard and unjust as they were, and executed the said last-mentioned agreement, and from that time to the present they have faithfully and industriously labored to induce the said defendants to carry out the same with some decent show of good faith. Some delay was occasioned by the refusal of the First National Bank of Memphis to receive and hold the deposit of bonds provided for in said agreement, but that was finally arranged to the satisfaction of the parties, as will be hereinafter stated. In the mean time, and promptly after the execution of the said last agreement, your orators designated Col. George B. Fleece, an experienced and capable engineer, and a gentleman of the highest character, as the engineer to be appointed by your orators under the said agreement, of which the defendants were duly notified. The said George B. Fleece suggested to B. Mickle, the
19 chief engineer of the said board, the name of Capt. R. L. Cobb, an engineer of the highest character and capacity, as the third engineer provided for in said agreement, and the said Cobb was acceptable to and was accepted by the said Mickle as such third engineer, and the said board of arbitrament was thus formed and organized, and

entered upon their duties, the said Fleece and Cobb accepting the said appointment, and taking upon themselves the burthen thereof, and being fully recognized by the defendants and by said Mickle as members of the said board of arbitrament.

Your orators state that the said Mickle, as chief engineer as aforesaid and in his capacity as a member of said board of arbitrament, on the 5th of December, 1872, addressed a letter to the said George B. Fleece, at Friar's Point, where the said Fleece and Cobb had gone for the purpose of proceeding with their duties, in which letter the said Mickle stated that the deposit of the bonds had not been arranged to the satisfaction of Maj. Alcorn (meaning the defendant M. S. Alcorn) and himself, and that they were going to Memphis to have the matter adjusted; that if it should be satisfactorily arranged, as he doubted not it would be, the measurement would go on, otherwise he (Mickle) would feel constrained to decline any further action, at the same time declaring that he had full confidence in Col. Fleece and Capt. Cobb, and would sanction whatever they might do, so that they could go ahead with the measurement until his return.

20 In pursuance of the said letter the said Fleece and Cobb did proceed with the measurement for two or three days in the absence of said Mickle, who on his return joined them (the deposit of bonds having been made satisfactory), and did approve what had been done in his absence, and did proceed for some days, in conjunction with the said Fleece and Cobb, to examine, measure, and estimate the work done by your orators on the said levees. In a few days, however, the said Mickle and the said levee board suggested the necessity of a further agreement, in writing, to govern the said board of arbitrament in adjusting the matters brought before them. This agreement was drawn up by said Mickle himself, and was agreed to and executed by your orators and the said levee board by M. S. Alcorn, their president. This agreement sets out by reciting that "B. Mickle, on the part of said board, Geo. B. Fleece, on the part of Partee and Stansell, and R. L. Cobb, designated by said Geo. B. Fleece with the consent of the said B. Mickle, constitute the board of arbitrament referred to in the aforesaid agreement," bearing date the 4th day of October, 1872, and it contains various provisions to govern "the said board of arbitrament," and to compensate the members thereof for their services. Annexed to this agreement and referred to therein are the specifications referred to in the original contract of September 28th, 1871, between the said levee board and your orators. The agreement bears date December 12th, 1872, and with the said specifications is herewith filed, marked Exhibit C, and made a part of this bill.

21 Among other things contained therein it was agreed thereby that your orators should, before further proceeding with the measurement, notify the said levee board, in writing, what points they expected to prove before said board of arbitrament and the character of the evidence proposed. In pursuance of this stipulation your orators on the same day of the date of said last agreement, to wit, on the 12th of December, 1872, delivered to the said M. S. Alcorn, as president of said levee board, a notification of the points which they expected to prove and the character of the proof; and they show that from that time to the present the said defendants and the said Mickle have, on various unfounded pretexts, wholly refused to proceed with the measurement of the said work, or to carry out the said agreement of September 28th, 1871, unless your orators would agree to other and new exactions and

demands by which they would give up a large and valuable portion of their rights.

Your orators believe the fact to be, and therefore so charge, that the said levee board, after the said arbitrators had been engaged for a few *a* days in their work, became satisfied that the labors of said board of arbitrament would result in finding a large balance in favor of your orators, and in the establishment of the correctness of the measurement and estimates of Kirkpatrick, their first chief engineer, and in disclosure of the false and erroneous estimates made by said Mickle, as their special engineer, and that the said levee board therefore
22 combined and conspired with the said Mickle to break up the said board of arbitrament, by causing the said R. L. Cobb to withdraw from the same, intending in that event that the said Mickle should not accept any other engineer who might be designated by the said George B. Fleece as his successor, and that thus the said arbitrament might not be carried out. For this purpose they, immeadiately, after the twelfth day of December, 1872, falsely pretended that the said Cobb was not a member of said board; that he had not been designated by said Fleece to said Mickle as the third engineer to compose the said board, and that he had not been accepted as such by said Mickle, and that in fact he was not acceptable to said Mickle. All which pretences were entirely without foundation in fact, and were never thought of until after your orators had delivered the notification of the points they proposed to bring before the said board of arbitrament for decision, and were then invented only for the purpose of breaking up the said board, and preventing them from considering and deciding upon the points in controversy. Your orators made continued and persistent efforts to induce the said levee board and the said Mickle as their representative and engineer to proceed with the said work in conjunction with the said Fleece and Cobb, who were on the ground with sufficient assistants and outfit, ready to complete their labors, with as little expense and delay as possible. But the said board of levee commissioners, and the said Mickle, their arbitrator, and
23 *and* engineer, wholly refused to recognize the *the* said Cobb as one of the said arbitrators, or to allow the business to be proceeded with at all on any conditions, with the said Cobb acting as one of the arbitrators. Your orators state that no ground of objection whatever existed against said Cobb, who is accomplished and eminent in his profession as an engineer, and a man of great purity and independence of character. He was a total stranger to your orators until a short time before he was selected and designated by the said Fleece as said third member of said arbitration, and he never came in any degree under their influence. He was selected by the said Fleece solely on account of his capacity and fitness for the position, and his whole conduct in connexion with it was fair, just, and impartial; and, as your orators believe, the only reason why the objection to him was started was to wound his sensibilities, make his situation uncomfortable and embarrassing, or to cause the board of arbitration to be broken up by his withdrawal from it. Having spent the interval from the 12th of December, 1872, in fruitless efforts to induce the said levee board and the said Mickle to proceed with the measurement of said work, your orators, on the 18th of January, 1873, suggested to the said Geo. B. Fleece that he should consent to the withdrawal of Capt. Cobb from the said board, and that he should designate another engineer in his place to the said Mickle in the hope that the obstacles to progress
24 might be thus overcome, and they state that the said Fleece

on the last-named day did present in writing to said Mickle the names of five distinguished and competent engineers, all disinterested and impartial, and most likely from their location and employment to be best known personally or by reputation to the said Mickle, and requested him to select from the number the one most acceptable to him to be the third engineer on said board in place of the said Cobb; but the said Mickle refuses to act at all upon said nominations, either to accept or reject, and refused to take any steps towards the reorganization of the said board, unless the said Fleece, as one of the said arbitrators, will first agree with him that certain claims of your orators contained in the notifications delivered to the president of the levee board, on the 12th of December, 1872, as hereinbefore stated, shall be ultimately decided, according to the preconceived views of said Mickle, and adversely to your orators. The said Fleece has not felt it to be consistent with his sense of propriety to pledge himself in advance to decide in a particular way questions that are to come before him for adjudication, and that without hearing the parties, and before the appointment of the third member of the board, and without his advice and assistance. In all these proceedings the said Mickle has acted under the instructions of *of* the said levee board, and with their full concurrence; and thus the said levee board have, through their control of their engineer, broken*en* up the said board of arbitrament, and have refused, and do refuse to carry out the said agreement dated October 4th, 1872, heretofore filed as *as* Exhibit B.

Your orators state that during all this time from the 1st of December last to the present time they have been compelled to pay all the expenses of the said board of arbitrament, the said levee board having failed and refused to make any provisions for the payment of any part thereof, and they aver that the expenses incurred by them for the services of the said Fleece and Cobb, and their assistants, and for board, travelling expenses, outfit, &c., amounts to the sum of $1,200.00, or thereabouts, which they are entitled to recover in this proceeding from the said defendants.

Your orators shew that the said pretended release or acquittance being void, as heretofore shown, and having thus been waived and abandoned by defendants; and the said defendants having wrongfully and fraudulently refused to carry out the said agreement, dated October 4th, 1872, for the settlement of the differences between the said levee board and your orators, your orators are remitted to all their rights under their original contract, and are entitled to receive from the said defendants the balance remaining due according to the original estimates of the said Kirkpatrick as chief engineer of the said defendants as hereinbefore fully set forth.

26 They also show that the said levee board are further indebted to your orators in a large additional sum of money for work done outside of the line and limits of the levee by order of the chief engineer of said board and for extra work done by the same order, and also for refinishing various portions of the said levee by order of said board after the same had been finished and fully completed according to the directions and to the entire satisfaction of the said engineers, and had been accepted by him, which last-mentioned items of work will amount to 15,000 cubic yards of the value of $9,750.00, payable in the funds of said board at the rate of ninety cents to the dollar.

And your orators further show that the only resources of the levee board aforesaid for the payment of its engagements and liabilities consist in the power conferred by the above-mentioned act of the legislature to

issue their bonds to the amount of one million of dollars payable in not less than two nor more than ten years from Jan. 1st, 1871, bearing eight per cent. interest, and the tax of two per cent. per annum on the value of the lands in the levee district, which tax is to continue and be collected in each and every year for twelve successive years. Your orators show that the said levee board have published a statement of the whole number of acres of land liable to taxation in said district, to wit, 1,206,742 acres, and the valuation thereof at the rates fixed by said act, to wit, $7,535,410.00, showing that the total tax per ammum to be expected to arise under said act is $150,708.22. But
27 this your orators believe is considerably more than can possibly be realized from the tax, inasmuch as a large portion, especially of the unimproved land, will no doubt be forfeited or sold for the tax and bought by the said board or their treasurer.

The said board will also expend a large amount in the payment of their own compensation, and the salaries of their tax collectors, secretary, treasurer, engineers, and other employees, and in the payment of contingent expenses of various kinds, so that under the most favorable circumstances, and with the utmost economy, the said tax cannot produce more than enough to pay the annual interest and retire the bonds as they fall due. They show that the said levee board are having other work done, and are giving out other contracts, and are, from day to day, issuing the said bonds and negotiating them to various other parties. Your orators are informed and believe the fact to be so that the said board have already issued bonds to the amount of $800,000.00, or thereabouts, and that, in a very short time, they will have issued, unless restrained, the whole amount of one million dollars, and will have neither bonds, money, nor available resources of any kind with which to pay the amount due by them to your orators; and your orators believe and charge that it is the intention and purpose of said board to hasten the issuance of said bonds so that nothing may be left for the satisfaction of your orator's claim. The said board being a body corporate, with no capital stock or other property, and no resources except the said
28 bonds, and the tax levied for the purpose of liquidating them, hold the said bonds as trustees for the parties to whom they contract to issue and deliver them. And whenever they shall have made contracts for said bonds to the amount of one million of dollars their power to make such contracts becomes exhausted, and the bonds so contracted for are a special trust in their hands to satisfy such contracts. And your orators show that it would be a gross breach of trust for the said levee board to enter into any contracts or engagements that would require a larger amount than one million of bonds to satisfy, or to deliver any of said one million of bonds to any persons without satisfying the parties holding previous contracts. Your orators shew that they are now entitled to demand and receive from the said levee board their bonds to the amount of one hundred and fifty-seven thousand dollars, and that unless your honor shall promptly and speedily grant an injunction restraining the said defendants from issuing to any other parties the said amount of one hundred and fifty-seven thousand dollars of said bonds, parcel of said one million, the whole million will be issued, and your orators will suffer irreparable damage by the total loss of their just claim which there will then be no means left of satisfying. Your orators believe and charge that the delay involved in arranging a time and place for hearing the motion for injunction, and giving reason-
29 able notice thereof to the opposite party would be productive of irreparable injury to them from the probability that the whole

amount of said bonds would be issued before said motion could be heard, and therefore that an intermediate injunction to continue until the hearing is necesssary to your orator's safety.

Your orators further show that they have no adequate remedy at law in the premises. The said bonds have no quotable price in the money market and cannot be sold unless at a very great sacrifice. To be obliged to accept as damages what a jury would award as the cash value of the bonds in the market would simply involve your orators in ruin. It is necessary that they should have the possession of the bonds themselves, so that they could, to some extent, control the price, watch the market, hunt out purchaser', and hold the securities until favorable opportunities of sale might offer. This was the intention of the contract, and in no other way could your orators possibly save themselves from absolute ruin. Besides at the end of a suit of law instead of obtaining the bonds contracted for, your orators would have a naked judgment for certain dollars and cents against a bankrupt corporation that never possessed or was intended to possess any capital stock or property. It is manifest, therefore, that your orators' only remedy is in a court of equity, by requiring the defendants to hold in their hands, or to deposit in this court, a sufficient amount, parcel of the said one million, to cover
30 your orators' claim, and interest, and by directing such bonds to the amount they may be found due, to be delivered to your orators.

And your orators further show unto your honor that in pursuance of the stipulation contain' in the said article of agreement hereinbefore set forth dated October 4th, 1872, and filed as Exhibit B, requiring your orators to deposit in the First National Bank of Memphis twenty-five thousand dollars of the bonds of said levee district in trust for the payment of any deficit and expenses in the event that the estimate contemplated by the said agreement should fall short of the said estimate previously made by the said B. Mickle as special engineer of said board, your orators on the 4th day of December, A. D. 1872, did deposit in the said First National Bank of Memphis the said amount of twenty-five thousand dollars of the bonds of said board in trust for the purposes specified in the said agreement, and took the receipt of the cashier of said bank therefor; and at the same time it was agreed by an instrument of writing entered into on the said 4th day of December, 1872, between your orators and the said levee board, the latter acting by and through Henry Craft, esq., the attorney of the said board, duly authorized in that behalf, after reciting the fact of the making of the said deposit as aforesaid, that the said First National Bank should hold the said bonds so deposited as trustee until the measurement and arbitration provided for in the said agreement should be made,
31 and that when the result thereof should be made known to the said bank, the said bank would either surrender the said bonds to your orators or to the said levee board, as should be determined by the result of said measurement and arbitration, and that until such result should be made known and demand for said bonds should be made by the party who should be entitled, the said First National Bank should hold and retain the said bonds as such trustee and on special deposit; and it was also thereby further agreed that in reference to said bonds the parties thereto would be represented in transactions with said First National Bank by your orator, H. A. Partee, on behalf of your orators, and by said Henry Craft on behalf of said levee board, and that the said First National Bank should surrender the said bonds or dispose of the same as directed by the said Partee and the said Craft, both uniting in the direction; a copy of which last-mentioned agree-

ment is herewith filed, marked Exhibit D, and made a part of this bill the original being in the hands of the said levee board.

And your orators show that the said levee board, on being advised of the terms and conditions of said deposit, were not satisfied therewith and objected to the qualified and partial control of said bonds retained by your orators, and therefore your orators, determined that said measurement and arbitration should not be defeated for the want of any possible concession on their part, did agree, at the request of the said defendants, that the said levee board themselves might
32 hold the said twenty-five thousand dollars of bonds in their possession and control as trustees, subject to the award and decision of the said board of arbitrament, and as security for any amount that might be awarded against your orators; and your orators accordingly endorsed upon the receipt of the said bank for the said bonds an order directing the said bank to deliver the said bonds to the said M. S. Alcorn, as president of the said levee board, to be held by the said levee board in trust for the purposes aforesaid, and delivered the said receipt so endorsed to the said Alcorn as such president. And your orators at the same time took the receipts of the said Alcorn as president as aforesaid, whereby, after reciting the said agreement of October 4th, 1872, between your orators and the said levee board for the said measurement and arbitration aforesaid, and especially that part of said agreement providing for the deposit by your orators in the said First National Bank of Memphis of twenty-five thousand dollars of the bonds of said levee board as a security for the performance of the said agreement by your orators, it was declared that the said agreement had been so modified that your orators had deposited said twenty-five thousand dollars in the hands of the said levee board, through the president of said board, to be held in trust, as they would have been held by the said First National Bank under said original agreement, and to be appropriated to the purposes provided for in the said agreement or returned to your orators according to the result of the said arbitration and the provisions of said agreement, and the
33 said levee board did thereby acknowledge the receipt of the said twenty-five thousand dollars of the bonds of said board from your orators as therein set out; which said last-mentioned receipt and agreement, bearing date the 5th day of December, 1872, is herewith filed as Exhibit E, and made a part of this bill.

Your orators are informed and believe that the defendants have not presented the said order for said bonds to the said bank, and have not withdrawn the from the said bank, but that the same shall remain in the said bank on special deposit, enclosed in an envelope, and kept separate and distinct from other securities held by said bank; or if the said order has been presented that the said bank still holds the said bonds on deposit, subject to the order of the said board or of the said M S.. Alcorn as the president thereof.

Your orators show that the said defendants, as herein before fully shown, have wholly refused to allow the said arbitration to be proceeded with and carried out, and have caused their chief engineer to withdraw from the same, and to refuse to accept or agree to the election of a third engineer, to compose said board of arbitrament, and have by their conduct, as hereinbefore detailed, wholly prevented and defeated the execution of the said agreement of arbitration hereinbefore set forth, and filed as Exhibit B; and that the said defendant have no right longer to withhold from your orators the possession of the said

twenty-five thousand dollars of bonds so deposited in trust as aforesaid, but are bound to restore the same to your orators.

Your orators cannot withdraw the said bonds from the said
34 bank without producing the receipt given for the same with the order of said levee board, or their president or attorney. The said bank is a corporation located in the State of Tennessee, where the said bonds are held beyond the jurisdiction of this court, but the said bank will deliver the said bonds to your orators upon the production of the said receipt, with the proper endorsement on the same, but your orators are apprehensive that the said defendant will withdraw the said bonds from the said bank, and place them beyond the reach of your orators, unless enjoined by your honor.

Your orators show that the said defendants are guilty of a gross breach of trust in retaining and refusing to surrender the said bonds, since their refusal to carry out the said arbitration, and that they ought in equity and conscience promptly to deliver up the receipt of the said bank for said bonds with the proper endorsement thereon, so as to enable your orators to receive said bonds from said bank.

They show that they have no adequate remedy at law in the premises against the said bank, nor against the defendants. Besides, the said bonds having no cash value in the market and depending for their value to your orators in their skill and energy in finding purchasers, and on their holding them to await advantageous opportunities to dispose of them; no recovery that could be had at law would be an adequate compensation to your orators for being deprived of the use and control of the bonds themselves.

35 To the end, therefore, that the said defendant may show, if they can, why your orators should not have the relief hereby prayed, your orators pray for proper process against the said defendents to appear and answer this bill, the said levee board under their corporate seal, and the other defendants as to such matters as are charged to be within their personal knowledge, and as to which a discovery is prayed upon their several oaths, and that your honor grant an injunction restraining the said defendants from issuing to any person other than your orators, the bonds of the said levee board to the amount of one hundred and fifty-seven thousand dollars, parcel of the sum of one million dollars of bonds which the said board have power to issue, and requiring the defendants to hold the said amount of bonds in their possession, or to deposit the same in this court, to await and be subject to the final decree in this cause, and that your honor will grant an immediate order for such injunction, to continue until a time to be appointed by your honor when the defendants can be notified to appear and show cause why such injunction should not be continued until the hearing of the cause; and that the said defendants be required to discover and produce with their answers the original contract between your orators and said levee board, dated September 28th, 1871, and also all the monthly partial estimates, and the final estimate of the work done by your orators, as returned to said board by said W. R. Kirkpatrick, their chief engineer, and if the same are lost or destroyed, then that
36 they disclose and produce such record or other evidence thereof as may be in their possession, and that they produce and file the said instrument of acquittance or release, and that the same may be cancelled and declared void.

And that the said defendants answer all the allegations of this bill as minutely as if specially interrogated thereto. And that the said defendants produce and file in court the said amount of twenty-five thou-

sand dollars of bonds belonging to your orators deposited as security for the performance by your orators of the said contract dated October 4th, 1872, and that the same be delivered up to your orators. And that your honor will cause an account to be taken of the amount due to your orators on account of the several matters set forth in this bill, and will decree that the defendants deliver to your orators in satisfaction thereof an amount of the bonds of said levee board sufficient, at the rate of ninety cents on the dollar, to pay and satisfy the same.

And that your honor will also grant an injunction to restrain the said defendants from recieving from the said First National Bank of Memphis the said twenty-five thousand dollars of bonds so held on deposit as aforesaid, and from assigning or transferring the said receipts of the said bank for the said bonds. And that the said defendants may be required to produce and exhibit with their answer the
37 said receipt (which your orators charge is in the possession of some one or more of the said defendants), and that they may be required to endorse thereon or otherwise give your orators the proper order or authority to receive the said bonds from the said bank. Or if the said defendants have withdrawn said bonds from the said bank then that the said defendant may be required to deliver the said bonds to your orators.

Or if your orators are mistaken in regard to any portion of the relief to which they are entitled in the premises, they pray for such other and further or different relief as the nature of the case may require, and as may be agreeable to equity and good conscience; and your orators will ever pray, &c.

ELLETT & PHELAN,
Soli's for Compl'nts.

U. S. OF AMERICA,
District West Tennessee:

Personally appeared before the undersigned, a commissioner appointed by the circuit court of *of* the U. States for the district of West Tennessee, H. A. Partee and J. W. Stansell, who being severally sworn, say the facts stated in the foregoing bill so far as stated upon their own knowledge, are true, and so far as stated upon information from others they believe them to be true.

HIRAM A. PARTEE.
J. W. STANSELL.

Sworn and subscribed this 20th day of Feb'uary, A. D. 1873.
C. CARMING SMITH,
U. S. Commissioner.

38 To the clerk of the district court for the northern district of Mississippi:

Let the writ of injunction issue as prayed for in the foregoing bill, without bond, restraining the acts therein sought to be enjoined until the decision upon the motion for injunction, to be heard on the first Monday of April next, of which motion notice has been given by said complainants.

Given under my hand this 22nd day of Feb'uary, 1873.
R. A. HILL, *Judge.*

Filed Feb. 23d, 1873. G. R. Hill, clerk.

EXHIBIT A.

This agreement made this twenty-eighth day of September, A. D. 1871, by and between H. A. Partee, of the city of Memphis, and State of Tennessee, and J. W. Stancil, of the city of Helena and State of Arkansas, of the first part, and the Board of Levee Commissioners of District Number (1) One, of the second part, the said district embracing the counties of De Soto, Tunica, Tallahatchie, Panola, and Coahoma, Mississippi, witnesseth:

That for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said levee commissioners, the first party hereby covenant and agree to construct and finish in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners all the graduations and such other work as may be required on Flower Lake levee in Tunica County, Mississippi; also the pass on the Yazoo Pass levee, in Coahoma County, Mississippi; also the Shelby R'dge and Port Royal levees, in Coahoma County, Mississippi.

The said work to be finished as described in the specifications, and agreeably to directions, from time to time, of the chief engineer, on or before the following times, to wit: Yazoo Pass leeve, in Coahoma County, to be finished on or before the tenth of December, A. D. 1871; the Delta levee, in Coahoma County, on or before first of January, A. D. 1872; the Port Royal levee, in the same county, on or before the first of January, A. D. 1872; the Flower Lake levee, in Tunica County, on or before the first of February, A. D. 1872; the Shelby Ridge levee, in Coahoma County, on or before 1st of Feb., A. D. 1872. The said party of the second part agree to pay to the party of the first part for the work above enumerated, the following per cubic yard, in bonds, at the rate of ninety cents on the dollar.

For the Flower Lake forty-five cents. per cubic. For the Yazoo Pass levee sixty-five cents per cubic yard. For Delta levee forty-five cents. For the Shelby Ridge levee forty-five cents per cubic yard. For the Port Royal levee forty five cents per cubic yard. All estimates to be made monthly, and bonds issued in accordance with the estimates when made. The said party of the first part further agree to commence active operation on the Yazoo Pass and Delta on or before the fifteenth of October, A. D. 1871.

All sinkage shall be paid for by the party of the second part.

In testimony whereof we have hereunto set our hands and seals, the day and year first above written.

(Signed) HIRAM A. PARTEE. [SEAL.]
(Signed) J. W. STANSELL. [SEAL.]

Contractors not to be held liable for unavoidable causes.

A true copy:

[SEAL OF LEVEE BOARD.] A. R. HOWE,
Sec. Miss. Levee Board Dist. No. 1.

Filed Feb. 28th, 1873. G. R. Hill, clerk.

EXHIBIT B.

This agreement made and entered into this 4th day of October, 1872, between the Board of Levee Commissioners of Miss. Levee District No. 1,

of the first part, and Partee and Stansell, contractors on levee, in said district, of the second part, witnesseth that, whereas said party of the first part have heretofore made full and complete settlement for all work done on said levee by said party of the second part, as evidenced by their receipt acknowledging the same; and said party of the second part do now come forward and complain that injustice was done them in said settlement; and, it being the desire of the party of
41 the first part to do full justice to all men, it is hereby agreed that the party of the second part shall designate an engineer, who shall proceed with the chief engineer of this board, to measure all work done by said party of the second part on said levee; and render to the parties to this agreement an estimate of the amount due to the party of the second part for such work, according to the contracts entered into for the completion of the same. And it is further agreed that should said estimate exceed the estimate made by the special engineer of this board in the month of June, 1872, the party of the first part shall pay to said Partee and Stansell, party of the second, the amount of such excess, and all the expenses of this measurement shall be borne by the board. But if the said estimate shall be less than *than* the estimate of the said special engineer, in June, 1872, then said party of the second part shall refund to said party of the first part the amount of such deficit, and pay all the expenses of this measurement. And, it is further agreed that said Partee and Stansell shall deposit in the First National Bank of Memphis, twenty-five thousand dollars of the bonds of said levee district No. 1, in trust for the payment of said deficit and expenses, in the event said estimate shall fall short of the said estimate of the special engineer. It is further agreed that the parties of the second part shall designate an engineer, which engineer shall suggest a third engineer, who shall be acceptable to
42 the chief engineers of this board, and the said engineers so selected, shall, with the chief engineer of this board, constitute a board of arbitrament for the adjustment of all questions of difference, the agreement of any two to be final.

In the adjustment of questions pertaining to this measurement the contractors shall have the privilege of introducing all proper evidence, oral or written, of notes, profiles, or other evidence, which testimony may be rebutted by the president of the board. This testimony being allowed to give the engineer information as to the fills or any other fact not perceptible to the engineers, to which testimony the engineers shall give such weight as they may think the same entitled to receive.

Witness our hands and seals this the 4th day of October, 1872.

M. S. ALCORN, *Pres't.* [SEAL.]
PARTEE AND STANSELL. [SEAL.]

Filed Feb. 28, 1873. G. R. Hill, clerk.

EXHIBIT C.

Specifications and agreement.

Article of agreement.

This agreement made the day of eighteen hundred and seventy-one, by and between of the first part, and the Board of Levee Commissioners of District No. 1, embracing the counties of "De Soto, Tunica, Panola, Tallahatchie, and Coahoma," Mississippi, of the second part, witnesseth: That for and in consideration of the payments and covenants hereinafter mentioned to be made and per-
43 formed by said levee commissioners, the first party hereby cove-

nants and agrees to construct and finish in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners all the graduation and such other work as may be required in sections numbered in County, Mississippi, on said levee. The said work to be finished as described in the following specifications and agre'ably to the directions, from time to time, of the chief engineer, on or before the day of , A. D. 1871.

SPECIFICATIONS.

1. The levee shall be graded ten feet wide on top, except when otherwise directed by the chief engineer, in the side slopes of such inclination as the chief engineer, in each case shall designate, usually four feet to one on the river side and two and a half to one on the other side, and in conformity to such heights of filling as may have been or may hereafter be determined upon by the chief engineer.

2. The ground to be occupied by the levee must first be cleared of trees, stumps, logs, trash, weeds, and all perishable matter, the trees and stumps being first cut level with the surface of the ground. The entire surface must then be thoroughly broken with a spade or plow in order to form a bond with the earth deposited. Then a muck ditch must be cut four feet wide at the top, and two feet at the bottom, and four feet deep; all stumps and roots crossing it being carefully
44 taken out and removed beyond the base of the levee. The muck ditch must be cut ten feet from the center line of the levee on that side next the river. As each section is thus cleared, broken, and muck ditch cut, the contractor must notify the engineer in charge, when he will measure the contents of the ditch, and then set stakes on each side of the centre at the proper distance from the base of the levee. But in no case will these stak's be set until the clearing, surface-breaking, and muck ditch are done as above described, and at least a section in advance of the embankment, and no embankment put up without this previous preparation, or before the said stakes are set, will be estimated or paid for. As soon as the work is staked the muck ditch must be filled in again with buck-shot earth or clay, obtained from without the base of the levee.

3. When the ground is prepared, as required by article 2, the embankment will be commenced and must be formed in uniform layers not exceeding three feet in thickness. The slopes shall in all *in* cases be commenced full out to the side stakes and carried regularly up as the embankment progresses, so that when the necessary allowance for settling shall have been added to grade at top it will give the required width of ten feet for upper base. Nothing will be paid for settling but its cost will be included in the price paid for the levee as estimated up to the true grade. If the levee be found deficient in height,
45 slopes, or base, or not to have the full settling on the top and slopes, the contractor must go over it immediately and correct all deficiencies; when the engineer in charge will run a test level over to see that it is all right.

4. In procuring material for the levee, the place will be designated by the engineer in charge, always on the river side, unless otherwise directed, and in excavating and removing it care must be taken to injure and disfigure the land as little as possible. In no case must it be obtained within twelve feet of the base of the levee on the river side, and the slope of the pit next to the embankment must not be less than two to one.

If from unavoidable causes it becomes necessary to procure material on the inside of the levee, it must not be taken in sixty feet of the base. But it is not to be taken from the inside at all unless forced by high water or some insuperable difficulty, and then only upon the written order of the chief engineer, designating the place.

At intervals of one hundred feet a berme must be left across the borrow-pits to prevent the flow of a current along the levee.

All levees shall be estimated in embankment and not in excavation, and to be paid for by the cubic yard.

5. All earth designed for embankment must be entirely divested of roots, trash, and all perishable matter.

6. In cutting drains or new channels for streams, they shall be cut at such distance from the levee as the chief engineer may require.

46 7. The line of levee or gradients may be changed if the chief engineer shall consider such change necessary or expedient, and for any considerable alterations the injury or advantage of the contractor will be estimated, and such allowance or deduction made in the prices as the chief engineer may deem just and equitable. The chief engineer may also, on the conditions last recited, increase or diminish the length of any section.

8. No charges shall be made by the contractor for hindrances or delays from any cause in the progress of any portion of the work in this contract, but it may entitle him to an extension of the time allowed for the completion of the work sufficient to compensate for the detention to be determined by the chief engineer.

9. All damage or injury to the work resulting from flood or other cause shall be sustained by the contractor until finished and received by the chief engineer, and no work shall be received until fully and completely finished in accordance with the above specifications.

10. The above specifications, if misunderstood, will be fully explained by the engineer in charge, but if neglected, no measurement or estimate will be made on the work until they are complied with.

47 On or about the first day of every month during the progress of the work an estimate shall be made of the relative value of the work done, to be judged of by the chief engineer, and upon his certificate of the amount, audited by the president and countersigned by the secretary, being presented to the treasurer. Four-fifths of the amount of said estimate shall be paid to the first party; provided the amount due on said estimate to the first party shall be more than hundred dollars.

And when all the work embraced in this contract is completed agreeably to the specifications and in accordance with the directions and to the satisfaction and acceptance of the chief engineer, there shall be a final estimate made of the quantity, character, and value of said work agreeably to the terms of this agreement, when the balance appearing due to the first party shall be paid to upon giving a release under seal to the said levee commissioners from all claims or demand whatsoever growing in any manner out of this agreement.

It is further agreed and understood that the work embraced in this contract shall be commenced in from this date and prosecuted with such force as the chief engineer shall deem adequate to its completion within the time specified, and if at any time the first party shall refuse or neglect to prosecute the work with a force sufficient in the opinion of the chief engineer for its completion within the time specified in this agreement, then and in that case the president of the

said board of levee commissioners may employ such number of workmen, laborers, and overseers as may in the opinion of the chief engineer be necessary to ensure the completion of the work within the time hereinbefore limited at such wages as he may find it necessary or expedient to give; pay all persons so employed and charge the amount so paid to the first party as for so much money paid to said first party on this contract; or the chief engineer may at his discretion for the failure to prosecute the work with an adequate force, for non-compliance with his directions in regard to the manner of constructing it, or for any other omission or neglect of the requirements of this agreement and specifications on the part of the first party, declare this contract or any portion or section embraced in it forfeited, which declaration and forfeiture shall exonerate the second party from any and all liabilities and obligations arising under this contract the same as if this agreement had never been made, and any amount reserved upon any work done by the first party may be retained forever by the second party.

And it is mutually agreed and distinctly understood that the decision of the chief engineer shall be final and conclusive in any dispute which may arise between the parties to this agreement, relative to or touching the same; and each party hereby waives all right of action, suit, or other remedy in law or otherwise by virtue of the said covenant so that the decision of the chief engineer shall, in the nature of an award, be final and conclusive on the rights and claims of said parties.

[SEAL.]
[SEAL.]
[SEAL.]

Total number of acres in the district not including the State lands.

Total number of acres in the district	1,356,74
Deduct for non-payment of taxes	350,000
	1,006,742
Number acres in cultivation, first-class land	103,400
	903,342
Cleared, but not in cultivation, second-class land	35,325
Not cleared, or third-class land	868,017
89,400 acres of first-class land, assessed at $30 per acre	$2,682,000
14,000 acres of first-class land, assessed at $20 per acre	280,000
24,000 acres of second-class land, assessed at $15 per acre	360,000
11,000 acres of second-class land, assessed at $10 per acre	113,325
120,000 acres of third-class land, assessed at $3 per acre	360,000
748,017 acres of third-class land, assessed at $5 per acre	3,740,085
Total valuation	7,535,416
At two per cent	.02
Total tax per annum	150,708 20

Filed Febr. 28th, 1873.

S. R. HILL, *Clerk.*

50 EXHIBIT C.

Agreement of date continued Dec. 12th, 1872.

In accordance with the terms an agreement, entered into on the 4th day of October, 1872, by the Board of Levee Commissioners of Mississippi Levee District No. 1, of the first part, and Partee & Stansell contractors on levees in said district, of the second part. B. Mickle on the part of the said board; Geo. B. Fleece on the part of Partee and Stansell; and R. L. Cobb, designated by said Geo. B. Fleece, with the consent of said Mickle, constitute the board of arbitrament referred to in said agreement.

It is agreed by the undersigned that the following memoranda shall govern the said board of arbitrament in adjusting all matters brought before them.

1st. In taking testimony they will be governed by the rules practiced by the courts of justice in this State.

2nd. Inasmuch as by the terms of said agreement, the first party can only rebut the testimony introduced by the second party, it is agreed that the said second party; shall, before further proceeding with the measurement, notify the first party in writing what points they expect to prove and the character of the evidence proposed, so that the said first party may be ready with the rebutting evidence.

3d. It is understood that the specifications referred to in the original contract, made by said Partee and Stansell with said board of levee commissioners, for the construction of levees, are the printed specifications hereto attached, which are those usually referred to in levee contracts in this district.

4th. It is further agreed and understood that the said board of
51 arbitrament shall procure such assistant laborers and materials as they may deem necessary or expedient, and fix the compensation of such assistants and laborers; and the amount thereof shall be paid by said board of levee commissioners or Partee and Stansell, as by them may be decided, such payment to be made upon the certificate of said board of arbitrament in amount and at the time by them to be designated. And with a view to the determination of the compensation of the several members of said board of arbitrament for services by them rendered, it is agreed that upon completion of the work or the permanent suspension thereof, the several members of said board of arbitrament shall be immediately paid their several bills for services rendered—said bills to be certified and approved by each member of said board of arbitrament; and, whereas, for the payment of said bills and expenses herein before referred to the said Board of Levee Commissioners, and the second party Partee and Stansell are jointly and severally bound, it is understood and agreed that either party paying the same or any part thereof, shall be credited by the amount thereof so paid, and approved as above required; and upon final settlement between said levee board and Partee and Stansell, the said payments shall be adjusted between them as the result of the estimate herein contemplated shall indicate. But it is understood that if the charges made by the said members of the said board of arbitrament shall be declared unsatisfactory to either of said parties, then the same shall be re-
52 ferred to Minor Merriweather, esq., of Memphis, whose decision touching the same shall finally determine the amount of the same

shall finally determine the amount of the same—and settlement shall be immediately made in accordance therewith.

M. S. ALCORN, *Prest.*
PARTEE AND STANSELL.

FRIAR'S POINT, MISS., *Dec. 12th*, 1872.
Filed Feb. 28th, 1873, G. R. Hill, clerk.

EXHIBIT D.

Agreement respecting deposit of bonds.

H. A. Partee and J.W. Stansell, partners under firm-name of Partee and Stansell, do this day deposit in the First National Bank of Mimphis, twenty-five thousand dollars of the bonds of Levee District No. 1—of the State of Mississippi in pursuance of an agreement made and entered by and between the levee board, through its president M. S. Alcorn, and said Partee and Stansell, on the 4th day of October, 1876, which agreement is here referred to and made part hereof.

As trustee, the said First National Bank will hold the said bonds until the measurement and arbitrat*ors* provided for in said agreement shall be made, and when the result of the same shall be made known to the said bank, it will either surrender the said bonds to said Partee and Stansell, or to said levee board, as shall be determined by the result of said measurement and arbitration. Until each result is made known,
53 and demand for said bonds made by the party who shall be entitled, the said First National Bank will hold and retain the said bonds as such trutsee, and on special deposit.

Witness the hands of the parties this fifth day of December, 1872.

(Signed) PARTEE AND STANSELL,
HENRY CRAFT,
Atto. for Levee Board.

In reference to said bonds, the parties hereto will be represented in transactions with said First National Bank by H. A. Partee on behalf of Partee and Stansell, and by Henry Craft on behalf of said levee board; and said First National Bank will surrender said bonds or dispose of them as directed by said Partee and said Craft, both uniting in the direction.

PARTEE AND STANSELL,
HENRY CRAFT,
Atto. for Levee Board.

Filed Feb. 28th, 1873. G. R. Hill, clerk.

EXHIBIT E.

Agreement to modify agreement to arbitrate.

An agreement was made between Partee and Stansell, of the one part, and the Levee Board of District No. 1, State of Mississippi, for a remeasurement of certain work and arbitration of questions of difference between them, which agreement is here referred to as part hereof.

By said agreement it was provided that Partee and Stansell
54 should deposit in First National Bank of Memphis, twenty-five thousand dollars of the bonds of said levee board, as a security for the performance of said agreement, and to be appropriated to it should the result of said arbitration be adverse to Partee and Stanseli. Now, the agreement aforesaid has been so modified that said Partee

and Stansell now deposit said twenty thousand dollars of bonds in the hands of said levee board, through the undersigned president of said board, to be held in trust, as they would have been held by said First National Bank under said original agreement, and to be appropriated to the purposes provided for in said agreement, or return to said Partee and Stansell, according to the result of said arbitration and the provisions of said agreement.

And said levee board does hereby acknowledge the receipt of said twenty-five thousand dollars of the bonds of said levee board from Partee and Stansell, as hereinbefore set out.

This 5 December, 1872.

M. S. ALCORN, *Pres't.*

Filed Feb. 28th, 1873. G. R. Hill, clerk.

And afterwards, to wit, on the 28th day of February, 1873, summons was issued for John McCann, in words and figures following, to wit:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you without delay to summon John McCann, citizen of the State of Mississippi, residing in the northern district
55 thereof, that he be and appear before the district court of the United States, in the clerk's office of said court, at rules, to be held at the town of Oxford, for the said northern district of Mississippi, on the first Monday of April next, to answer to the complaint of Hiram A. Partee, a citizen of the State of Tennessee, and Jeptha W. Stansell, a citizen of *of* the State of Arkansas, and that he do enter his appearance with the clerk of said court on or before said rule day or decree pro confesso will be given against him, and have then there this writ.

Witness the honorable Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of December, A. D. 1873, and 97th year of the Independence of the United States.

Issued 28th day of February, 1873.

[SEAL.] G. R. HILL, *Clerk.*

Received March 1st, 1873.

J. H. PIERCE,
U. S. Marshal, N. D. Miss.

Afterwards, to wit, on March 3d, 1873, appointment of special deputy was made in words and figures following, to wit:

I hereby constitute and appoint M. J. Manning my special deputy, to execute and return the within process.

Given under my hand and this 3 day of March, 1873.

J. H. PIERCE,
U. S. Marshal Northern District Miss.

56 And afterwards, to wit, on the 8th of March, 1873, return was made on this process in words and figures following, to wit:

Executed this 8th day of March, 1873, by reading the within process to the within-named John McCann.

J. H. PIERCE,
U. S. Marshal, Northern Dist Miss.
By M. J. MANNING,
Deputy U. S. Marshal.

And, to wit, on the 28th day of February, 1873, summons for Milton S. Alcorn was issued, in words and figures following, to wit:

Subpœna.

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you without delay to summon Milton S. Alcorn, citizen of the State of Mississippi, residing in the northern district thereof, that he be and appear before the district court of the United States, in the clerk's office of said court, at rules to be held at the town of Oxford, for the said northern district of Mississippi, on the first Monday in April next, to answer the complaint of Hiram A. Partee, a citizen of the State of Tennessee, and Jeptha W. Stansell, citizen of the State of Arkansas, and that he do enter his appearance with the clerk of said court on or before the said rule-day, or decree pro confesso will be given against him; and have then there this writ.

[SEAL.] Witness the honorable Robert A. Hill, judge of the district court of the United States for the northern
57 district of Mississippi, at Oxford, the first Monday of December, A. D. 1873, and 97 year of the Independence of the United States.

Issued the 28th day of Feb'uary, 1878.

G. R. HILL, *Clerk.*

Received, March 1st, 1873.

J. H. PIERCE,
U. S. Marshal, N. D. Miss.

Afterwards, to wit, on 28th Feb'uary, 1873, appointment of special deputy was made in words and figures following, to wit:

I hereby constitute and appoint D. F. Alcorn my special deputy to execute and return this writ.

Given under my hand and seal this 28th Feb., 1873.

J. H. PIERCE,
U. S. Marshal.

The other subpœnas sued out in this cause against all the other defendants in said bill have been lost or mislaid and cannot now be found, after diligent search.

On the 28th day of Feb'uary, 1873, a writ of injunction was sued out in this cause, in words and figures as follows, to wit:

Writ of injunction.

UNITED STATES OF AMERICA,
Northern District of Miss.:

In the district court of said district. In chancery.

58 [SEAL.] United States of America to The Levee Board of the State of Mississippi, District No. One, their attorneys, agents, &c.:

Whereas it hath been represented to us in our court of chancery for the said district, that H. A. Partee and J. W. Stansell have exhibited their bill of complaint in our said court of chancery against you, the

said The Levee Board of the State of Mississippi, District No. One, defendants, and others, to be relieved touching the matters therein contained, and we being willing that right and justice may be done in that behalf: we, therefore, in consideration of the premises, do strictly enjoin and command you the said Levee Board of Mississippi, District No. One, your officers, attorneys, agents, and so forth, under the penalty that may fall thereon, that you and every of you do absolutely refrain and desist from issuing to any person other than said complainants the bonds of said levee board to the amount of one hundred and fifty-seven thousand dolla's, parcel of the sum of one million dollars of bonds which you, the said levee board, are authorized to issue by act of the legislature of the State of Mississippi, approved May 17, 1871, and you are further enjoined and required to hold in your hands the said amount of one hundred and fifty-seven thousand dollars of your said bonds, parcel of said amount of one million dollars, or to deposit the same in this court to await and be subject to the final decree in this cause. And we do further enjoin and restrain you from receiving from the said First National Bank of Memphis the bonds of said levee
59 board to the amount of twenty-five thousand dollars heretofore issued by you to the said complainants, and by them deposited in said bank, subject to your order, as security for the performance by said complainant of a certain agreement set forth in the said bill of complaint.

Witness the Hon. R. A. Hill, judge of said court, and the seal thereof, at Oxford the 28th day of Feb'uary, A. D. 1873.

[SEAL.] G. R. HILL, *Clerk.*

Received March 1st, 1873.

J. H. PIERCE,
U. S. Marshal, N. D. Miss.

On the 28th day of Feb'uary, 1873, appointment of special deputy was made in words and figures as follows, to wit:

I hereby constitute and appoint D. F. Alcorn, my special deputy to execute and return this writ.

Given under my hand and seal this 28th day of February, 1873.

[SEAL.] J. H. PIERCE,
U. S. Marshal.

Afterwards to wit, on the 5th day of March, 1873, return was made on the above writ in words and figures following, to wit:

Return.

Executed the within writ by personal service on Milton S. Alcorn, president of the board of levee com. & &c., by reading the within writ to him and by delivering to him a true copy of the same.

This the 5th day of March, 1873.

J. H. PIERCE, *U. S. M.*
D. F. ALCORN,
Sp'c'l Dep'ty, U. S. M.

60 Afterwards, to wit, on the 7th day of April, 1873, notice to defendants was filed in this cause in words and figures following, to wit.

UNITED STATES OF AMERICA,
Northern District of Miss.:

District court of said district, in chancery.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS. DISTRICT No. 1
and others.

Notice to defendants.

To the defendants in the above cause:

You are notified that a motion will be made in the foregoing cause before the district court of the United States for the northern district of Mississippi, at the court-room at Oxford, on the first Monday of April next, at one o'clock of said day, or as soon thereafter as the same can be heard, to grant an injunction against the defendants as prayed for in the bill in said cause, Feb'uary 22, 1873.

Yours, &c.

ELLIOT AND PHELAN,
Sol's of Compl'nts.

To M. S. Alcorn, pres't of said board and others, defendants.

Filed April 7th, 1873. G. R. Hill, clerk.

On the 7th day of April, 1873, notice of injunction was filed by
61 complainants in this cause, in words and figures following, to wit:

Notice of injunction.

UNITED STATES OF AMERICA,
Northern District of Miss.:

In the district court of the said district, in chancery.

PARTEE AND STANSELL
vs.
THE LEVEE BOARD OF MISS. DISTRICT
No. 1, and others.

You are hereby notified that the honorable R. A. Hill, district judge of the U. States for the northern district of Mississippi, has granted an injunction restraining you from issuing to any person other than the complainants in the above cause the bonds of the said levee board to the amount of one hundred and fifty-seven thousand dollars, parcel of the sum of one million dollars of bonds which you, the said levee board, are authorized to issue by act of the legislature of the State of Mississippi, approved May 17th, 1871, and requiring you to hold in your hands the said amount of one hundred and fifty-seven thousand of your said bonds, parcel of the said amount of one million dollars, or to deposit the same in said court to await and be subject to the final decree in this cause. Also enjoining you from receiving from the First National Bank of Memphis, the bonds of the said levee board to the

62 amount of twenty-five thousand dollars heretofore issued by you to said complainants and deposited in said bank, subject to your order, as security for the performance of a certain agreement set forth in said bill. The said injunction to continue until the decision of the said district court upon the motion for injunction in the said cause, which will be heard before the said court on the first Monday of April next, at the court-room at Oxford, in the said district, of which motion notice has already been given, and is hereby repeated.

Feb'uary 26, 1873.

Yours, &c.

ELLETT & PHELAN,
Sol'rs for Compl'nts.

To the Levee Board of Mississippi District, No. 1.

Affidavit.

Personally appeared before the undersigned, a commissioner appointed by the circuit court of the U. S. for the district of West Tennessee, J. W. Stansell, one of the complainants in the foregoing cause, who, being sworn, makes oath that on the 26th day of Feb'uary, 1873, he delivered to M. S. Alcorn, one of the defendants, and president of the Levee Board of Mississippi District No. 1, in person, a true copy of the foregoing notice, and informed him of the contents thereof; and further saith not.

J. W. STANSELL.

Sworn and subscribed this 26th day of Feb'uary, 1873, before me.

ISAAC MORRISON.
U. S. Com'r.

Filed Apr. 7, 1873. G. R. Hill, clerk.

63 *Answer of defendants.*

U. S. dist. court, north. dist. Miss.

PARTEE AND STANSELL
vs.
THE LEVEE BOARD OF MISS. NO. 1, ET AL. } No. 197.

The joint and several answers of the Levee Board of the State of Mississippi, District No. 1, and of M. S. Alcorn, John McCann, J. H. Cocke, William W. Howe, and Jeremiah Robinson, to a bill filed against them, in the district court of the United States for the northern district of Miss., in equity sitting, at Oxford, by Hiram A. Partee and J. W. Stansell.

Said defendants, reserving the benefit of all proper exceptions to said bill, for answer thereto say that said levee board is a body politic and corporate by act of the legislature of Miss., as charged with commissioners *as charged*, and the organization, powers, and purposes of said board are correctly set out in the bill. For greater certainty defendants file herewith, marked "Exhibit No. 1," a printed copy of the charter of said board.

Defendants admit that complainants contracted to do levee work for said board. This answer is prepared when defendants have not access

to the original bill, and they have had no opportunity to examine the exhibits filed therewith. They cannot say, therefore, whether the copy of the contract filed as Exhibit A, is a copy or not. Defendants say, however, that to the best of their information and belief this con-
64 tract as originally made did not contain the provision that said work was to be paid for in bonds at 90 cts., or at a discount of 10 per cent. On the contrary they say that the original contract simply provided for payment in bonds, and that long after it was made complainants came before the board and claimed that a verbal agreement, outside of the written contract, was made between them and Dr. Dowd, (former president of the board, then dead), that they should receive the bonds at 90 cents, and, upon this representation, the board agreed that the bonds should be so paid them, and the secretary of the board interlined in the written contract the words "at the rate of ninety (90) cents on the dollar, in the following sentence in which said words now occur, viz: "The said party of the second part agree to pay to the party of the first part, for the work above enumerated the following per cubic yard, in bonds at the rate of ninety (90) cts. on the dollar." Defendants have no knowledge of an application to the secretary of the board for a copy of said contract, which has not been responded to. They
Ex. 3. file herewith, marked "Exhibit No. 3," the original contract. The specifications are those printed in connection with the charter, filed herewith as Exhibit No. 1, to which reference is made. No other specifications than these were drawn up. The chief engineer could not waive any of the requirements in said contract and specifications contained. A contract was made by the board with E. A. Lindsley for levee work on Willow Lake, just such as was
65 made with complainants—that is, without any promise for payment of bonds at less than par. Defendants file a copy of this contract as Exhibit No. 4. The specifications belonging to it are the same mentioned above, and printed with the charter filed as Exhibit No. 1. Under their original contract, and the Lindsley contract transferred to them, complainants begun and prosecuted the work contracted for. Defendants deny that they did this work in accordance with the specifications. Their information and belief is that to a very great extent the work done did not come up to the specifications, and was not such as should have been received by the chief engineer, or such as the chief engineer was authorized, under specification No 9, to receive. Monthly estimates and partial payments were made as alleged. The person then acting as chief engineer of the board did also make what purported to be final estimates upon the whole or a portion of the work done by compl'ts *complaint's*. These final estimates are, in part, now in possession of defendants. The remainder, being the estimate of the Yazoo Pass and Delta levee was by Kirkpatrick withdrawn, and defendants cannot furnish it, nor a copy of it, nor a statement of what it contained. These estimates contain the field-notes and are very voluminous. Defendants will produce and file them whenever called upon. They will hereafter refer to and file a condensed statement of the sum total of these estimates tabulated with the claim made now by compl'ts, and with the results of measurements made by the present chief engineer. A comparison will show that if Kirkpatrick gave compl'ts the figures which
66 are inserted in the bill, he did not return the same figures to the board. The estimates made by said Kirkpatrick of work done by complainants were, as defendants are informed and believe, to a very great extent incorrect, and always incorrect to the prejudice of

the board and the advantage of complainants. Complainants claim that the Gordon Breach is part of the Yazoo Pass levee, and that some other portion, perhaps, of the levee between the Yazoo Pass and Delta, are to be considered parts of the Yazoo Pass levee. Defendants deny that anything, except the Yazoo Pass levee, strictly limited to the Yazoo, Pass, is to be estimated as part of that levee. The object in seeking to embrace as much as possible under that designation is to increase the compensation, as the contract price for the Yazoo Pass levee is 65 cents per cubic yard. It may be that Kirkpatrick estimated in accordance with the claim so made by complainants, and, if he did, his estimates were to that extent fraudulent and false. There is, as defendants insist, no ground whatever for such a claim. The Yazoo Pass levee means just that and no more. That name designates a distinct piece of work and does not include Gordon's Breach, nor any work between Gordon's Breach and Delta.

Complainants did perform labor on the old levee between the Yazoo Pass and Delta, for which an estimate was made by Kirkpatrick greater than the amount of the work actually done, and at a price per cubic yard greater than was just. Upon this estimate complainants
67 were paid. Subsequently, in September, 1872, compl'ts came before the board at a regular meeting, held in Austin, and complained that injustice had been done them in the matter of repairs of old levees between Delta and the Yazoo Pass. Thereupon an order was made by the board directing B. Mickle, the special engineer of the board, to run over and remeasure the repairs done by compl'ts, and to associate with him an engineer to be employed by complainants, with power to the two to select a third engineer, to act as umpire in case of disagreement. This order directed the treasurer to settle with complainants upon the new measurement thus to be made, deducting the amount of a previous estimate, viz, 10,728 cubic yards, the price per cubic yard to be fixed by said engineers, as to its relative value compared with the Yazoo Pass levee, with the proviso that the estimate of said engineers should be first approved by the president of the board before the treasurer should make payment. Under this order complainants selected Flynn and he and said Mickle measured said repairs in entire harmony, and without the necessity of calling in a third engineer. This measurement they made early in September, 1872. Upon making, from the notes in this measurement an estimate of the amount of repairs done by complainants, it was found by said Flynn and Mickle that the amount was less than that for which complainants had been already paid, to wit, 10,728 cubic yards. Thereupon the said Flynn refused to join said Mickle in making any report of their measurement. Defendants believe that com-
68 plainants were fully cognizant of these facts, and yet they seem in their bill to charge for only a portion of these repairs, as being 15,000 cubic yards. Defendants deny that the board is indebted to complainants for 15,000 cubic yards of repairs at 65 cents per yard, charged to have been made between Gordon's Breach and Yazoo Pass, and they deny that the board is indebted to complainants in any amount whatever for repairs or labor done on old levee.

At the said meeting of the board in Austin in September, 1872, defendants understood complainants to aver that said Kirkpatrick had never measured the Yazoo Pass levee nor any of the work between Yazoo Pass and Delta.

As above stated, defendants believe that an estimate upon this work, whether made from measurement or not defendants cannot say, was

once presented by said Kirkpatrick to the board, but when he found that the work was to be remeasured, fearing to have his estimates tested, he withdrew the estimates and defendants have not had it since and cannot produce it. Moreover defendant Alcorn says that said Kirkpatrick presented his field-notes along with his estimates of the Yazoo Pass levee, and said Alcorn told him that those notes would not sustain his estimates. Kirkpatrick agreed to refer the notes & calculation to Minor Merriweather, a distinguished civil engineer, who pronounced the estimates clearly erroneous and not sustained by the notes. Kirkpatrick, without the knowledge of the board, withdrew his notes and estimates, and defendants have not seen them since.

69 Defendants do not know what are the facts in regard to settlements made, as alleged by complainants, with subcontractors on the faith of Kirkpatrick's estimates. Further on in their bill, when narrating the circumstances under which they signed a release of the board, they lay stress upon the fact that "they had a large number of subcontractors and employees waiting for payment." The estimates made by Mickle and tabulated with Kirkpatrick's estimates, as hereafter exhibited, include, as defendants believe, all that was ever due to complainants for grubbing, clearing, and sinkage, and they deny that the board is now indebted to complainants for any work under either of those heads. And defendants now here distinctly and expressly deny the allegations of the bill as to the amount and value of their work at different points and on different portions of levee, except so far as and to the extent that the estimates of the said Mickle show such amount and value, and they deny that the board is now indebted as alleged, or is indebted to any amount or any extent whatever for work done by complainants.

Defendants had reason to believe and did believe that their chief engineer, Kirkpatrick, had made incorrect, unjust, and fraudulent estimates for complainants, and thereupon the board caused the work to be remeasured by a disinterested engineer, Wm. Heman, whose estimate fell far short of that made by said Kirkpatrick. After this the board caused still another measurement to be made, and, before having it done, notified complainants of their intention, and urged

70 complainant to send an engineer of their own selection to see that the work should be fairly done. Complainant agreed to send, but did not send, an engineer. The work was done by B. Mickle. He was instructed by the board to make his final estimates fair and liberal, and defendants have reason to believe and do believe that in the measurements and estimates then made complainants received credit for all the work of every sort done by them, and even for more than they had actually done. Defendants file herewith, marked Exhibit No. 5, the report of B. Mickle, showing the aggregate of work done by complainants, and they file, marked Exhibit No. 6, a tabular statement showing in one column the claim of complainants as made in their bill, and in another column the estimates of Kirkpatrick, and in still another column the estimates of the said B. Mickle. Defendants now again explicitly deny that the estimates made by the said Mickle were false. On the contrary, they believe that the same gave complainants credit for even more work than they had done. They repeat that they did believe and now believe that the action of the said Kirkpatrick was fraudulent and corrupt in accepting and estimating the work of complainants. They believe, and upon their information and belief say, the work was not done in all respects according to contract and specifications, and that in some places logs and stumps were in the levee

71 made by complainants to the knowledge of complainants and of

said Kirkpatrick. They deny expressly all charges made against the board of exaction, oppression, and injustice, and of fraudulent and unlawful conduct. They say that the board sought, with all due diligence, to discharge its duty to the public and to complainants; that it refused to act upon the final estimates of said Kirkpatrick, because it believed and has reason to believe, that those estimates were false and fraudulent, and that, so believing, it took steps to have said estimates tested and verified by new measurements, in which complainants were invited to participate, and that, when satisfied as to the amount due complainants, it was ready and willing to settle with them at once. Believing that Kirkpatrick had endeavored to perpetrate a fraud upon the board, the board would have been unmindful of its duty had it made no investigation. Having, as already stated, caused his work to be twice gone over by reliable engineers, and being by their reports entirely satisfied that Kirkpatrick's estimates were not correct, it was the plainest duty of the board to reject those estimates.

The board was willing to pay all that it believed to be due, and was thus willing just as soon as, by due exertion, proper estimates could be made. In thus paying all that was due to complainants, the board demanded, and properly demanded, as it did and was bound
72 to demand, of all contractors, a release in full. Defendants deny utterly all the duress, oppression, and undue advantage alleged in the bill. They do not believe that complainants had a large number of contractors and employees who had not been discharged. Their belief is that they had discharged them all without settling with the subcontractors, settlement being postponed until "the new engineer" could make up his estimates. They have been informed and believe that, in in point of fact, complainants have failed and refused to settle with some, perhaps many of their subcontractors, even up to this time, and are now largely indebted to them. Until these estimates should be made the board could not settle with complainants. Defendants deny positively that complainants executed the release or receipt either under duress or under protest, and they deny that the same is illegal or invalid.

The release or receipt now held by the board is in the words and figures following:

"MEMPHIS, *June 18th*, 1872.

"Received of A. R. Howe, treasurer Mississippi Levee Board, District No. 1, forty-seven thousand eight hundred dollars, on account of work on levee, the same being full of all demands to date.

$47,800.00.

"PARTEE AND STANSELL,
"*Contractors.*"

This paper, as defendants are informed and believe, though dated in June, was actually signed in July, 1872. The settlement was
73 actually made in June, 18 , and a receipt or release in full was then executed by complainants, freely and voluntarily, without any protest or objection. A mistake, however, was made in this settlement and receipt, which the treasurer discovered and brought to the notice of complainants in July. Complainants conceded the error, and agreed to correct it. The receipt or release first executed as aforesaid was destroyed, and the paper above copied was prepared for the signature of complainants. Nothing was said about a protest until the existing release had been destroyed. Complainant Partee then proposed

to sign the new paper under protest, but the treasurer refused to receive it in that way, inasmuch as the original release had been given without protest, and it had been destroyed upon the promise of complainants to execute another in its place. The paper copied above was then signed, as defendants are informed and believe, and delivered to the treasurer in the stead of the one before executed, and was executed, as the other was, without protest.

Defendants expressly deny that the board has at any time "in effect conceded the nullity of said release, and have abandoned the same." They deny that from the time when said instrument was signed "complainants continued to urge on the board the injustice of their proceedings, and insisted on the payment of the balance due." At the meeting aforesaid, in September, 1872, complainants asked for a measurement of the repairs on the old levee, between
74 the Yazoo Pass and Delta. This work had not been estimated by B. Mickle, but complainants had been paid for it upon Kirkpatrick's estimates. Complainants did not, at that time, complain of any injustice as to other work; subsequently, however, they did, in person and by attorney, appear before the board, and urge a claim for larger compensation. The board, always willing to do justice, and unwilling to wrong complainants or any one else, consented to a remeasurement and arbitration in the manner and upon the terms set out in the agreement executed on the 4th October, 1872. Defendants have not seen the copy of this agreement filed with the bill, and cannot say whether it is a copy or not. They file herewith, however, marked Exhibit No. 7, a correct copy, accompanied by a copy of subsequent agreements and correspondence growing out of it. These papers give the history of the matter, and defendants simply refer to them without following the bill through its detailed statements in regard to them. Defendants utterly and emphatically deny all the allegations of bad faith and collusion with said Mickle in regard to this matter. There was an informal organization of the board of arbitrators, and work of measurement was informally commenced; all this, however, was done in the confidence felt in complainants and their representative, George B. Fleece. The note of Mickle stating that the deposit of bonds had not been ar-
75 ranged satisfactorily, and that the arbitration would not proceed if this matter should not be arranged, shows the recognition by all parties of the want of certain preliminaries to complete organization, and an understanding that the organization, up to that time, was not completed. An informal recognition of R. L. Cobb had taken place, and the three were informally at work upon the measurement for a short time, with the understanding that when the preliminaries should be settled, and the organization completed, what had thus been informally done would be adopted and ratified. In the mean time, as the correspondence shows, Mickle was proceeding in his efforts to get the preliminaries adjusted. The matters to be considered by the arbitrators, and the testimony which might be introduced, were clearly defined by the agreement of October 4th, '72. The informal understanding having been reached as to the persons who should be arbitrators, it became important, before a formal recognition of Mr. Cobb as the third engineer, that Mickle and Fleece should know just what would come before them, and how it would be presented. To this end the president of the board and complainants entered into the agreement of Dec. 12, '72. Then complainants made to the president the communication of same date, as to what would be claimed, and upon what testimony. The next day

Mickle informed Fleece that these demands of complainants were
76 not admissible under the agreement of October 4, '72, and that he would not go forward in the consideration of matters beyond the jurisdiction of the arbitrators. This communication was addressed to Mr. Fleece as "civil engineer." Mr. Fleece in reply raises the "side issue" (as he subsequently terms it) as to whether Mr. Cobb has been recognized. So much defendants say in regard to this arbitration, and as preliminary to the assertion that the board was all the while ready and willing to have the agreement of October 4, '72, fully and fairly carried. They deny that the board has put any obstacle in the way, and they assert that the matter of difference and cause of trouble was complainant's demand to go beyond the agreement of October 4, '72, and commit the board by this arbitration, beyond its agreement. The board has been willing, and is still willing to carry out this agreement of Oct. 4, '72, fairly and honestly. They deny that they became satisfied, "after the arbitrators had been at work a few days," that a large balance would be found due complainants, and they deny that any such fear or apprehension influenced the action of the board or of said Mickle. They deny all the allegations and inferences of the bill, which are inconsistent herewith, and with the papers herewith filed. But whatever may be the merits of this question of arbitration, defendants are informed that no equity in behalf of complainants can grow out of
77 it. They especially deny that by reason of anything that has occurred complainants are, as they claim, "remitted to their rights under the original contract." The receipt or release in full copied above is in full force, and defendants rely upon it. Defendants claim that complainants have been paid in full for their work, as is recited in that receipt, and they insist that in face of that receipt no such injustice as is asked for can be granted.

The levee board was incorporated for a great public purpose, and is engaged in the prosecution of a work of vital importance to a large portion of the State—a work of importance so vital that it has been for many years a cherished object of legislative care and solicitude. As shown by the charter, the resources for the accomplishment of this work are solely the bonds authorized to the extent of $1,000,000. These bonds have been already issued, and as shown by the bill, in great measure expended in the prosecution of the work of building a levee. The work is far advanced towards completion and efficiency; contractors are now upon it with unfinished contracts; an overflow is imminent; should an overflow come, the flood bursting through the gaps still open would sweep away much of the levee already built, and carry ruin into the country. If the bonds shall be tied up, and the board restrained from using them, the work must stop at once, and the fearful risk and hazard be incurred, of destruction by a spring overflow.

78 If, as defendants conceive, beyond the scope of possibility, that complainants can be entitled to recover from the board anything like the amount which they seek to tie up by injunction, by comparison it will be seen that they claim very largely more than the estimates of Kirkpatrick, which they aver to be correct. Defendants have no doubt whatever that they can go forward and make the work already done safe and useful, and pay out the contracts now being executed, and still have ample resources to pay any recovery which in any state of the case complainant can attain. The lands upon which the tax is not paid constitute a very large and valuable prospective source of income to the board. Being struck off to the board, the board had no intention whatever to hasten the issuance of the bonds because of complainants' claim,

but it did intend to use them as occasion should arise and is now arising, for the protection of the country.

The $25,000 of bonds deposited by complainants in the hands of def'd't M. S. Alcorn, as president of said board, are, as said def'd't Alcorn now states, specially deposited in First National Bank of Memphis. Defendants claim that complainants are largely indebted to the board, and expect to show this in the progress of this suit. They claim that the said $25,000 bonds should remain as a security for this indebted-
79 ness to await the settlement of this controversy.

Defendants, in conclusion, repeat that it is the desire and intention of the board to deal with complainants and all other persons fairly and justly. As already stated, they believe and insist that so far from being indebted to complainants, complainants are largely indebted to the board on account of overestimates, improperly constructed work, logs he put into levee. As a board, entrusted with the discharge of a duty to the public, the bill correctly states that the board is a trustee, it is bound to protect the fund committed to it, and it resists the demands made by complainants, because they are unjust and unfounded as the board believe.

This suit has already done great damage; in the lower part of Coahoma County contractors have been compelled to stop work, and the late high water got up behind the levee. Should the injunction applied for be granted, the consequences will be disastrous.

Defendants Cocke and Robinson have become members of the board in the places of Messrs. Tate and Hawkins, and the matter of this controversy transpired mainly before their connection with the board.

And now having fully answered, def'd'ts pray to be hence dismissed &c.

Authenticated by the seal of the board, affixed by order of the president.

SEAL OF LEVEE BOARD. KORBRIECHT, CRAFT AND SCALES.
LAMAR AND MAYES,
Sol's for Def'd'ts.

80 STATE OF TENNESSEE,
City of Memphis:

Before the undersigned, a United States commissioner duly appointed, &c., personally appeared M. S. Alcorn and J. McCann, two of the defendants named herein, and made oath in due form of law that the statements in the foregoing answer contain', so far as made from their own knowledge, are true, and so far as made from information of others, they do rely upon said information as correct, and believe the statements based upon it to be true.

M. S. ALCORN.
J. McCANN.

Sworn to and subscribed before me this 4th day of April, 1873.
HANSDON CARY,
U. S. Com'r, Dist. West Tenn'e.

THE STATE OF MISSISSIPPI,
County of Panola:

Before the undersigned, judge of the twelfth judicial circuit court, district of the State of Mississippi, this day personally appeared William W. Howe, and made oath in due form of law that the statements contained in the foregoing answer, so far as made from their own knowledge, are

true, and, so far as made upon information derived from others, they believe them to be true.

W. W. HOWES.

Sworn to and subscribed before me this 5th day of April, 1873.

E. S. FISHER,
Judge of the 12th Judicial District of the State of Mississippi.

81 STATE OF MISSISSIPPI,
County of De Soto:

Before me, the undersigned, this day personally appeared J. H. Cocke, who made oath in due form of law that the statements contained in the foregoing answer, so far as made from his own knowledge, are true, and, so far as made upon information derived from others, he believes them to be true.

J. H. COCKE.

Sworn and subscribed to before me this 5th day of April, 1873.

W. ATCHINSON, *J. P.*

The following are the exhibits to the answer:

EXHIBIT NO. 1.

Exhibit No. 1. Act of the legislature of Mississippi creating levee district No. 1; also statistics of land in the district; yearly tax raised therein; specifications of chief engineer, etc.

Officers and commissioners of the district.

Alcorn. Dr. A. S. Dowd, commissioner for Coahoma County.
Cocke. Col. T. S. Tate, " " " " De Soto "
Capt. W. W. Howe, " " " " Panola "
Capt. J. McCann, " " " " Tunica "
Robinson. Col. J. D. Hawkins, " " " " Tallahatchie "
Major A. R. Howe, secretary and treasurer of the board.
W. R. Kirkpatrick, chief engineer.

Copy of. 82 An act to redeem and protect from overflow from the river Mississippi certain bottom lands herein described.

Board of commissioners to be styled. SECTION 1. Be it enacted by the legislature of the State of Mississippi, That a board of commissioners to be styled "The Levee Board of the State of Mississippi, District No. 1," to consist of five members, one of whom shall reside in each of the counties of Tunica, Coahoma, Tallahatchie, Panola, and De Soto, shall be elected by the board of supervisors of their respective counties, and they and their successors in office shall constitute, and are hereby declared to be, a body politic and corporate by the name and style aforesaid, and by said name may sue and be sued, plead and be impleaded, contract and be contracted with, and have perpetual succession, for the purposes hereinafter designated. They may have a common seal, and alter and change the same at pleasure; they may from time to time

No. of district. To consist of members. Counties embraced in district.

Whom declared a body politic and corporate.

make such by-laws and regulations, and alter and change the same as they may deem proper, not inconsistent with this act and the laws of this State, for the purposes of carrying into effect the objects of this act: they shall elect a treasurer, secretary, and engineer, and from one of their own number a president, and such other officers and agents, and employ such persons as they may deem necessary for the efficient conduct and management of their business; they may do all acts and things not inconsistent with this act and the laws of this State that may be proper to effect the purposes and objects of this act.

Shall elect a treasurer, secretary, and engineer.

President, how elected, and other officers.

SEC. 2. Be it further enacted, That it shall be the duty of the board of supervisors of the several counties of Tunica, Coahoma, Tallahatchie, Panola, and De Soto to meet at the court-house of their respective counties on the second Monday in June, 1871, and then and there to elect a citizen of their respective counties to serve as a levee commissioner for four years from that time; and should such board of supervisors fail to make said election on the second Monday in June aforesaid it may do so at any subsequent meeting, or on any other day previous to their adjournment to court in course; and should any person so elected as levee commissioner at any time fail or refuse to serve, or shall die or resign, or shall remove from the county, or his term of office expire, or from any other cause become incompetent to discharge the trust confined to him, said board of supervisors electing him as aforesaid shall elect some other person as levee commissioner for the unexpired or subsequent term, as the case may be. Should the board of supervisors of any of said counties embraced in said district fail or refuse to elect a levee commissioner for any such county, as herein provided, or, when elected, should such persons fail or refuse to serve, then the persons who may have been elected and who shall attend the meetings as herein provided shall constitute the board of levee commissioners, and thereafter a majority of said levee commissioners so elected and accepting shall constitute a quorum to do business. Said levee commissioners shall serve until their successors are elected and qualified, and shall hold their first meeting at Austin, Tunica County, as soon as practicable after their election.

The duty of the board of supervisors.

To elect a commissioner to serve a term of years.

Levee commissioners to serve until their successors are elected and qualified.

SEC. 3. Be it further enacted, That said board of levee commissioners shall have power and are hereby required to contract, repair, and maintain a levee on or near the east bank of the Mississippi River, extending from the base of the hills on or next said bank of said river, in the State of Tennessee, or to the base of hills at any convenient point in the county of De Soto or in the State of Tennessee, the right of way having been granted by said State, to the southern boundary of the county of Coahoma; and to that end they may rebuild, strengthen, and elevate the old levee, or parts thereof, as they may deem necessary, and may from time to time alter and change the location, size, and elevation of the same as they may deem proper, in order effectually to protect and reclaim the lands in the district, hereinafter designated, from overflow by waters of

Power vested in board of commissioners.

Right of way, etc.

May alter and change direction and location of levees.

the Mississippi River; said levees and works shall be constructed on or near said banks of the Mississippi River, or in such other place or places as said board may determine; but in the location thereof they shall not be compelled to follow the bends of said river, but may alter and change the location and direction of said levees, and withdraw further from the river bank, from time to time, as they may deem proper, for the safety and the permanency of said works, or to avoid and undue expenditure of money.

The board shall determine the base, height, slope, etc.

Said board shall determine the base, height, slope,
85 and elevation of said levees, and as they may deem necessary, change the same. They may abandon any portion of any levee now built or to be constructed that they may deem unsafe or improperly constructed, and

Build new levees, upon such ground as they may select.

may build new levees on such ground as they may select, and repair old levees, as they may deem proper, and make all needful rules and regulations, and do all acts as they may deem necessary to carry into effect the objects and purposes of this act. They shall have power to let out such works, or parts thereof, and cause the same to be done by contract, or otherwise, as they may deem proper.

The offices of secretary and treasurer in one person.

SEC. 4. Be it further enacted, That the offices of treasurer and secretary may be united in one person or kept separate, as said board may from time to time prescribe. They shall hold their office for such time as the board may fix; but the board may remove them, or either of them, for misconduct at any time, and appoint a successor in case of removal or vacancy. Said treasurer and secretary shall, be-

Treasurer and secretary to give bond.

fore they undertake to discharge the duties of their offices, execute bond with three or more good and sufficient sureties, to be approved by the president of said board, in such full and sufficient penalty as said board may require, payable to the president of said board and his successor in office, and conditioned upon the faithful performance of their offices and the safe-keeping, accounting for, and paying over all
86 moneys, property, or effects that may come into their possession and custody under this act, or by the direction of said board, as the said board may require or direct. Said secretary and treasurer shall give bonds with good and sufficient sureties, payable as aforesaid, in such sums and with such conditions as said board may prescribe; and said board may also require bonds, with sureties, to be given by any other person or officer appointed, elected, or employed by them; and said bonds, and any of them, may, upon forfeiture, be put in suit and prosecuted from time to time in the name of said president or of said board for the use of said board.

The president shall execute bond.

SEC. 5. Be it further enacted, That the president shall, before entering upon his duties, execute a bond, with three or more good and sufficient sureties, payable to the board

President shall preside at meetings.

and approved by the same. He shall preside at all meetings thereof, and sign the minutes of its proceedings. He shall exercise a general supervision over the works and levees herein provided for, and may do all acts and things that said board may empower or authorize him to perform,

and in his absence from any of its meetings, said board may appoint a member to preside.

The secretary shall make and safely keep a true record of all proceedings and acts of said board, and perform such other duties as it may prescribe. The secretary shall make and keep a time-record, etc.

87 It shall be the duty of the treasurer of said board to receive, safely keep, and account for all moneys required to be paid to or received by him, by the provisions of this act, or by the direction of said board, and all other moneys, property, or effects, for which he is properly accountable as such treasurer. He shall pay out the same on the written order of the president, countersigned by the secretary, and not otherwise; and a faithful record of all such orders shall be kept by the treasurer, and also by the secretary, countersigning the same. The treasurer to receive and safely keep all moneys.

SEC. 6. Be it further enacted, that the domicil of said board of levee commissioners shall be at the county seat of Tunica County; and that said board of levee commissioners shall hold their regular meetings at the said town of Austin, Tunica County, on the first Monday of April and September of each year, and at such other times and places as they may appoint, and they may be called together by the president on ten day's notice of the time of meeting; a majority of said board shall constitute a quorum to transact all business. Each commissioner attending a meeting of said board shall be entitled to five dollars a day for each day he may be detained in attendance, and ten cents 88 each mile of travel to and from the place of meeting, estimating the distance by the nearest usual travelled route. The domicil of the board. Meetings of board. Commissioners entitled to & ct.

SEC. 7. Be it further enacted, That of all the bottom lands, lying and being in that certain district of country, bounded and described as follows, to wit: Beginning at the point where the line of said levee intersects the Tennesssee line; thence southward with the line of said levee to the southern boundary of Coahoma County; thence with the said last-named boundary line to the southern boundary; thence east with said last-named boundary line to the point at which said line intersects the range line between four and five west; thence south with said line to the southern boundary of township twenty-two; thence east with township line to the point at which said line intersects the southeast corner of Tallahatchie County; thence with southern boundary of Tallahatchie County, to the highest flood line on the base of the hills or second bottom lands, to the southern boundary of the State of Tennessee, at the point where that boundary is intersected by the highest flood lines of the Mississippi River; thence along said flood line to the place of beginning, said district embracing besides the lands in the counties of De Soto, Tunica, Coahoma, Tallahatchie, and Pontotoc, six townships in 89 the county of Sunflower, namely: Townships 22, 23, and 24, of range 3 west, and townships 22, 23, and 24, of range 4 west, shall be and constitute as aforesaid Mississippi Levee District No. 1, which it is the purpose of this act to protect and reclaim as aforesaid, by the agency Lands included in the district.

of said boards of commissioners; and the lands embraced and included in said levee district shall be, and are hereby declared to be, and are made chargeable and liable as hereinafter declared, for all the costs, outlays, charges, and expenses, to be incurred or made for the levees, works, and improvements, provided for and contemplated by this act, or in maintaining the same.

SEC. 8. Be it further enacted, That for the purpose of building, repairing, constructing, and maintaining the levees and works aforesaid, and for carrying into effect the objects and purposes of this act, a uniform charge and assessment of two per cent. per annum on the value of every acre of unimproved and improved lands and cultivated lands in said levee district is hereby fixed, levied, and made, which shall continue and be collected in each and every year for the period of twelve successive years from the date of this act, and shall be due and payable annually on or before the first day of September in each year for said period, and the valuation of every acre of unimproved land so taxed is hereby fixed by the purposes of this act at five dollars, except Sunflower and Tallahatchie counties, which shall be three dollars, and every acre of improved and cultivated land at thirty dollars, except Sunflower and Tallahatchie counties, which shall be twenty dollars, and every acre of land improved and fenced which shall not be cultivated at fifteen dollars, except Sunflower and Tallahatchie counties, which shall be ten dollars per acre; provided, that as soon as such unimproved lands shall have been improved, and said uncultivated lands shall have been put in cultivation in any year, the same shall be valued for the purposes of this act at thirty dollars per acre. The intention of this act, in its exercise of the taxing power, being that every acre of land cultivated in any year during the period of taxation shall be valued at the maximum assessment, and made liable to taxation accordingly; and in all assessments made the lands described as cultivated shall be held to be such when a crop shall have been pitched thereon, or the same shall have been used in any wise for production, or for any other use in the year for which the assessment shall be made.

An assessment of two per cent. per annum.

To be collectible for period of years.

Valuation of unimproved lands.

Valuation of improved and cultivated lands.

Unimproved lands.

SEC. 9. Be it further enacted, That for the purposes aforesaid, and to enable them to carry out the purposes of this act, the said board of levee commissioners shall have power to borrow money, and to that end may issue the bonds of said board to the amount of one million of dollars, in such sums and denominations not less than one hundred dollars each, as the said board may prescribe, which bonds shall be signed by the president and countersigned by the treasurer of said board, and be made payable to order, or to bearer, in not less than two nor more than ten years after the 1st day of January, 1871, and shall bear a rate of interest not exceeding eight per cent. per annum, for which interest coupons may be attached, payable at such time and place as the board may contract. Said bonds shall be negotiable as promissory notes or bills of exchange, and may be sold and negotiated in any market

The board shall have power to borrow money and issue bonds.

in or out of the State, on the best terms that can be obtained for the same, but in no case shall any of them be negotiated or sold at a greater discount than ten per cent. Said board shall fix a place or places for the payment of the principal and interest of said bonds and coupons, and said bonds or coupons shall be receivable, after maturity, at par, in payment of any charge or assessment fixed, levied, or made by this act; and the treasurer of said board shall keep a faithful and correct registry, as they are issued, of the number, amount, and place of payment of all bonds and coupons that may be issued and sold or used under this act, which
92 registry shall also specify the letter and number of the bonds so issued and sold or used. Said treasurer shall also keep a faithful and correct account showing the date, letter, number, amount, and place of payment of every bond paid by said board, or received in payment as aforesaid by said board, and the dates when so paid or received, and no bond so paid or received in payment by said board shall again be used or reissued, but every such bond shall be promptly cancelled by said treasurer. All moneys borrowed by said board, or arising from negotiations or sale of any of said bonds, shall be promptly paid into the treasury of said board, and shall constitute a levee fund, and be used and applied to carry into effect the objects and purposes of this act: Provided, That the tax collector shall make his settlements under this act with the treasurer of the board, under oath; that he shall set forth in that settlement a full statement of the levee tax of each individual of his county, specifying the amount paid by each in cash, the amount in bonds, and the date of each such payment; that he shall set forth these facts in one book, to be deposited for public inspection with the treasurer of the board of levee commissioners, and a duplicate thereof to be kept in his own office for public inspec-
93 tion, and that he shall be liable for damages, at the rate of three per cent. per month, for all moneys which shall have been shown by the said books to have remained in his hands to the credit of the board of levee commissioners for over one month.

Tax-collector to make his settlements with the treasurer

SEC. 10. Be it further enacted, That the charges and assessments fixed, levied, and made as aforesaid by this act shall be, as they are from time to time collected, and they are hereby, constituted, a special fund and trust, to be used by said board; first, in payment of any bonds that may be sold or used as before provided under this act, and any money that may be borrowed under its provisions; secondly, for the payment of any other debt or liabilities of said board; and when collected the same shall be paid into the treasury of said board for the purposes aforesaid. Said charges and assessments by this act fixed, levied, and made as aforesaid on said lands shall not be subject to repeal, alteration, or suspension during the time for which they are fixed, levied, and made as aforesaid, until all the bonds, obligations, and liabilities of said board shall be first paid and discharged; and should any of said charges and assessments not be collected as herein provided, then the

Charges and assessments upon lands not subject to repeal.

holder of any bond or obligation of said board which
94 may be due and unpaid may apply to the judge of the circuit court, or of the chancery court, of any district included in the levee district, for a mandamus directed to said board, by which mandamus said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments, as herein provided; or, instead of said mandamus, the said judges may, in their discretion, appoint one or more special commissioners, with authority to collect and pay over said charges and assessments; and for the collection of said charges and assessments the said commissioners, so appointed, shall have all the powers given by this act, and shall proceed in the same manner as by this act prescribed to the collectors of said board, for the enforcement and collection of the same; and such commissioners shall, before they act, give bonds in proper penalties, with good and sufficient securities, to be approved by said judge, and such commissioners shall be allowed for their services, when performed, a sum not exceeding one per cent. on the amounts collected and duly paid over by them.

By whom the charges and assessments shall be collected.

SEC. 11. Be it further enacted, That the charges and assessments fixed, levied, and made as aforesaid by this act, shall be collected by the tax collector appointed by the president and confirmed by the board, who shall give
95 bonds in a penalty double *double* the probable amount of the charges and assessments to be collected by him, with good and sufficient securities, to be approved by said board, which bond shall be payable to the president of said board and his successors in office, and shall be upon condition that such tax-collector will faithfully and promptly discharge the duties of his said appointment, and will truly and promptly account for and pay over to the treasurer of said board all moneys received or collected by him as such collector, and upon breach of said condition, said bonds may, from time to time, as may be necessary, be put in suit and prosecuted in the name of the president of said board for its use or in the name of said board, and the amounts received and collected upon any of said bonds shall be paid into the treasury of said board. And when suit is brought upon any such bond, for a default in not paying over money collected, interest, at the rate of ten per cent. per annum, from the date of default until the same shall be paid, shall be charged upon the amount due, and in addition thereto, twenty-five per cent. on the whole amount of principal and interest shall be charged as damages, and judgment shall be rendered against such tax-collector and his sureties on his bond for the whole amount of principal, interest, and damages as aforesaid, and the same rate of interest and damages shall be charged and allowed on all amounts
96 for which the treasurer or any other officer or agent shall be found in default for moneys received, and not duly paid and accounted.

Tax-collector to pay over all moneys to the treasurer.

SEC. 12. Be it further enacted, That in case the owner or owners of any land in said district, and any person interested therein, shall fail to pay the said charges and assess-

ments by this act levied thereon, at or before the time when the same shall become due as aforesaid, it shall be the duty of the tax-collector to proceed without any further assessment, demands, or notice, on the second Monday in January, in each and every year, after such charges and assessments become due as aforesaid, to sell at public auction to the highest bidder, for cash, at the door of the court-house of the county in which the land is situated, the said lands or so much thereof as may be necessary to pay the said charges and assessments due thereon, with fifteen per centum damages thereon, and all costs of conveyance to the purchaser, and shall execute to the purchaser at such sale, a proper deed, duly acknowledged and stamped if necessary, conveying the land so sold to such purchaser, which said deed shall be taken and received in all courts as vesting in such purchaser, a perfect title in fee-simple, and shall be evidence that the title of the owner or owners of such lands, as well as the claims of all persons interested therein, is thenceforward vested in such purchaser, and shall be prima facie evidence that such land was subject to
97 the charges and assessments, for non-payment of which it was sold, and that all things necessary to be done before such sale, in order to render the same legal and valid, had been in due time done; said collector may continue such sales from day to day, until all the lands liable to sale shall be disposed of, and if no person or persons shall bid for any land, the amount due and payable thereon for such charges and assessments, damages and costs, when the same is offered for sale as aforesaid, such land shall be struck off for said amounts to the treasurer of said board of commissioners, and such tax collector shall execute a deed conveying the same to said treasurer and his successors in office, in fee simple, for the use of said board, and such deed shall have like force and effect, and be evidence of a full and perfect title to the same extent and in the same manner as other deeds executed under the provisions of this section of this act. All deeds executed by such collectors shall remain on file in the office of the treasurer of said levee board for the period of ten years from the day of sale or of the execution of such deed, unless the land is sooner redeemed as hereinafter provided, but all minors and persons non compos mentis, shall have ten years to redeem after they become of age, or become of sound mind, upon paying the amount for which such land was sold,
98 and all subsequent taxes, charges, and assessments, due thereon, with interest at the rate of ten per centum per annum thereon, from the time the same severally became due until the date of redemption, and twenty-five per cent. damages.

Duty of tax-collector in case of non-payment of taxes, etc.

Purchaser receives a perfect title.

SEC. 13. Be it further enacted, That the treasurer of said board of commissioners, and his successors in office, shall have the power to sell at private sale any of said lands conveyed to him as aforesaid, provided he can obtain therefor, in cash, the amount of the purchase money, with accruing taxes, charges, assessments, and costs, with ten per centum per annum thereof from dates when due until paid,

The treasurer shall have power to sell lands.

but the collector's deed therefor shall still remain in the office of said treasurer as aforesaid, and the owner or owners of any lands so sold by such collector, and any person interested therein, may in person, or by their agent or attorney, apply to said treasurer at any time within two years from the date of such collector's sale, or the date of such deed, and redeem such land upon payment of the purchase-money and all subsequent taxes, charges and assessments, due and unpaid thereon, with interest at the rate of twenty-five per centum thereon from the time when due until the date of redemption. Such redemption may be made from the treasurer of said board, and his receipt shall entitle the person redeeming to have cancelled the collector's deed, and if any of the lands sold by such collector
99 are not redeemed or *or* sold within two years, as herein provided, the collector's deed for such land shall be recorded in the office of the chancery clerk of the county in which such land lies, and shall vest permanently, without further right of redemption, except to minors and persons non compos mentis, as aforesaid, the title to such lands in the treasurer of said board, or his successors in office, in the persons or persons who may have purchased the same, or in the person to whom the same may have been transferred, as the case may be, and when such land shall be so vested in the treasurer of said board, the same shall become a part of said levee fund, and may be sold as said board of levee commissioners may order. All moneys not belonging to said board that may be received by its treasurer for redemption of lands as aforesaid, shall be accounted for and paid over on demand by said treasurer, to the person or party authorized or entitled to receive the same. The collector of said board, for making such deed and delivering the same to the treasurer, shall be entitled to receive one dollar from the treasurer of said board for such deed, which sum shall be added and taxed to the costs of sale. No collector's deed shall be objected to for want of form, and when such deed shall include the lands of different claimants, the same shall not be surrendered to either, but upon redemption of part of the lands in such deed,
100 said treasurer shall endorse thereon that such part has been redeemed, and when such deed is recorded the record thereof shall show what portion has been redeemed, and that title to the same has reverted to the former owner or owners.

Collector's deed not objected to for want of form.

Duty of the auditor of public accounts.

SEC. 14. Be it further enacted, That it shall be the duty of the auditor of public accounts to receive the amounts of said charges and assessments fixed, levied, and made as aforesaid, from any person who may pay State and county taxes in his office; such payment shall, in all cases, be made before the first day of November in each year. The auditor shall receipt the same, and shall immediately, the first day of November, transmit to the treasurer of said board of commissioners a certified list of all such charges and assessments so paid in his office, with a list showing the names of the person' paying the same, the amounts paid by each, and the amount paid in bonds or

coupons, and for what property; and the auditor shall pay over the amounts so collected to the treasurer of said board in person, upon his order for that purpose.

The board to appoint persons to inspect levees.

SEC. 15. Be it further enacted, That it shall be the duty of said board of commissioners to appoint, or cause to be appointed, suitable persons in each county through which such levees shall run to inspect the levees in their respective counties in the district allotted to them,
101 who shall report the condition of the levees under their charge to said board of commissioners at each regular meeting in April and September. During high water said inspectors shall examine the levees assigned to their charge at least three times each week, and upon emergency and danger to said levees, of which said inspector shall be the exclusive judge, he may call out all male persons over sixteen and under fifty years of age residing in said levee district and within ten miles of the threatened work; and any person who, on such requisition, shall refuse to attend and work on said levee, shall forfeit and pay three dollars per day for each and every day he may make default, which sum shall be recovered at the suit of the president of said board in any court having jurisdiction; and for each day's labor, under such requisition, the person performing the same shall be entitled to receive two dollars & fifty cents, to be paid out of said levee fund.

To examine levees at least three times per week.

Call out all male persons over sixteen & under fifty within ten miles.

Entitled to receive.

When the owner of land shall object to location of levee.

SEC. 16. Be it further enacted, That when the owner of lands, or other persons interested therein, shall object to the location or building of the levee on such lands, or shall claim compensation for any land that may be taken, or for damages sustained in consequence thereof, the president of said board, or such owner of said land, or other per-
102 son interested therein, may for'with apply by petition in writing, setting forth the facts to the clerk of the board of supervisors of the county, who shall forthwith issue an order to the sheriff, commanding him to summon instantly twelve disinterested householders, residents of the county as commissioners, to go upon and view the premises, and inquire the damages sustained and the compensation such owner or other person interested is entitled to; said commissioners shall have five days' notice of the time and place of meeting, and shall be sworn by the sheriff, justly and truly to value and assess the damages that may be sustained by and the compensation to be paid to such owner or other person. Said commissioners shall render their inquisition in writing, which shall be returned to said clerk by said sheriff, and shall be final between the parties. If any person so summoned should fail to attend the sheriff shall immediately summon others of like qualifications, and if said commissioners shall fail to agree, after being kept together a reasonable time, to be judged by the sheriff, they shall be discharged and new commissioners shall be summoned. Upon payment or tender of the amount so found and assessed by said commissioners, it shall be lawful for said board of levee commissioners to proceed for'with, without further delay or obstruction, to locate and build the levee. Said sheriff shall give

two days' notice of the time and place of meeting of said commissioners to such owner or other person interested in said lands, and to the president of said boards of commissioners, or some agent of said board, if to be found in his county.

SEC. 17. Be it further enacted, That if it shall appear to said board of levee commissioners that the proceeds of said charges and assessments, fixed as aforesaid by this act, will exceed the amount necessary to pay off and discharge the bonds with accruing interest that may be issued under this act, and also all other indebtedness and liabilities that may be incurred by said board under the provisions of this act, then said board may reduce or suspend in part the collection of said charges and assessments, but a sufficient amount thereof shall be regularly collected to pay off all such bonds, indebtedness, and liabilities, with all interest; and such reduction or suspension shall in no wise prejudice the rights of the holder of such bond, or any other creditor of said board. Should any hold an overdue bond, it shall be his right, as the holder of such bond, or other creditor, to insist upon and enforce the collection of the whole of the charges and assessments herein made, if necessary to the payment and discharge of the bonds, coupons, or other debt or liability of said board.

Any person enjoining shall pay.

SEC. 18. Be it further enacted, That if any person shall enjoin the collection of any part of the charges and assessments made as aforesaid by this act, the court shall, in dissolving such injunction, award that the party enjoining shall pay as damages not more than double the amount of charges and assessments, the collection of which has improperly delayed by such injunction, and the court shall award an execution for the same, in favor of the president of said board, for the use of said levee fund, and for all costs, and such decree shall be a lien preferred to all other liens and encumbrances upon the property of such party.

Any person found guilty of cutting, injuring, &c.

SEC. 19. Be it further enacted, That if any person shall wilfully cut, injure, or destroy any part of said levee, or procure the same to be done, the person so offending shall be guilty of felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary of this State for a term not exceeding thirty years, and not less than six months.

SEC. 20. Be it further enacted, That no part of said levee fund, or the moneys of said board shall, at any time, be loaned or used in any manner, except as prescribed by this act, but said board may, and it shall be its duty to invest and keep invested in public securities of the United States, until required to pay, any of the bonds or liabilities of said board, and all such part of the funds and moneys of said board as may not at any time be required for present use in paying the matured debts and liabilities of said board, or in carrying into effect the purposes of this act.

SEC. 21. Be it further enacted, That said board shall, at all times, cause to be kept and preserved a full

account and records of its acts and proceedings, and of all funds funds received, and payments made, and of all bonds issued and sold or used, and of all bonds redeemed or coupons paid, and the same, and all the acts and doings of said board, and its officers and agents shall, at all times, be subject and liable to examination by the governor of this State, or his agent appointed for that purpose, and by any committee appointed by the legislature; and said board of levee commissioners shall, in the month of January in each year, cause to be prepared and forwarded to the said governor a full and detailed report showing the acts and doings of said board, the condition of said levees, the work done thereon, the amounts received, the amounts disbursed, and the engagements, debts, and liabilities of said board, and the condition of its affairs, and any member of said board may, for good cause, be removed as provided by law as in cases of county officers.

Stock to be kept off during high water.

SEC. 22. Be it further enacted, That it shall be the duty of said levee inspectors to require and compel the owners of hogs, cattle, horses, and mules to keep the same off the levee in time of high water, whenever, in the judg-
106 ment of said inspector, such stock are likely to endanger the levee, and such inspector shall give notice to such owners, and every such owner who, after such notice, shall neglect or refuse to confine his or her stock and keep them off the levees, shall pay a fine of not less than twenty-five dollars, nor more than one hundred dollars for each and every disobedience to such notice, to be recovered at the suit of the levee inspector or his successor in office, in any court of competent jurisdiction, and the amount recovered and collected shall be paid into the treasury of said board of levee commissioners.

SEC. 23. Be it further enacted, That if the charges and assessments herein fixed, levied, and made shall be adjudged and held imperitive, then the said board of levee commissioners shall have power, and they are hereby required to proceed immediately, through five commissioners, to be appointed by said board for that purpose, and have just and legal rates, assessments, charges, or taxes levied and made on all lands in said levee district, or on either, as may be lawful, sufficient in amount, when collected year by year, as contemplated by this act, to pay all such bonds, loans, debts, and liabilities, and enable said board of commissioners to carry into effect the provisions of this act, one of whom shall reside in each of the aforesaid counties.

107 SEC. 24. Be it further enacted, That the collection of all State and county taxes, which have been or may hereafter be assessed upon any lands that may be purchased for or vested in said levee board, as provided for in this act, shall be, and the same is hereby, suspended; so long as such lands are held as assetts of said board, said lands shall not, by anything herein, be relieved from taxes, but the same shall be charged up and properly accounted for, with interest, by said board, when such land is redeemed or purchased from them.

SEC. 25. Be it further enacted, That the president of said board shall receive annually, as his salary and compensation, such sum as may be agreed upon by said board of levee commissioners, and shall be paid in addition all his actual outlays for travel and other necessary expenses in the service of the board, which shall be paid out of the levee fund. The levee inspectors, and all other subordinate officers and agents appointed under this act, or by order of said board, shall hold office at the will of said board, and shall receive such compensation as said board shall allow, unless otherwise in this act, and the same and all necessary and proper expenditures made in carrying into effect the purposes of this act, shall be paid out of said levee fund. The tax-collector shall receive not over five per cent. for moneys collected.

Tax-collectors to receive not over five per cent., &c.

Board to have jurisdiction in all matters, &c.

SEC. 26. Be it further enacted, That upon the organization of said board of levee commissioners, as provided in this act, the said board shall have exclusive jurisdiction in all matters pertaining to levees upon the Mississippi River, above the said southern boundary-line of Coahoma County; and further, in all matters of dispute between said board and the board of Bolivar, Washington, and Issaquena counties, as to the junctions of the two levees or otherwise, the said boards, in any such case, shall respectively appoint one commissioner each to settle all such matters of dispute, and if they shall not agree thereon between themselves, they are hereby authorized to choose a third person to determine and settle the same.

SEC. 27. Be it further enacted, That no lands held by the United States, or this State, in trust or otherwise, nor any Chickasaw or other school-lands, if exempt from taxation, shall constitute part of the levee district established and created by this act, but such of said lands are *are* situated within the general boundary of said levee district, as fixed by this act, shall become and constitute part of said levee district as soon as they become subject by law to taxation, and then such lands shall become and be subject and liable to said charges and assessments fixed, levied, and made by this act, and collections of the same shall thereafter be made as prescribed for such collection by this act.

109

Every tax-payer of each county required.

SEC. 28. Be it further enacted, That every tax payer of each county, within the levee district herein defined, shall be, and is herby, required to file with the levee tax collector of said county, a statement under oath, setting forth the number of acres of land which he owns or represents, and on which he is chargeable under this act, the number of acres cleared and uncleared, the number under fence, and the number under cultivation; that this statement shall be filed as provided on or before the first day of September in each year, beginning with the first day of August, 1871; that in case of failure to so file it, the party failing shall be held taxable to an extent of twenty-five per cent. in addition to the amount of taxes which he would *have* otherwise have been liable under this act, and that any error remaining in the assessment of the lands of the par-

ties so failing, in consequence of his failure or otherwise shall not be held to effect in anywise *to* their lands when conveyed under this act by sale for non-payment of taxes.

SEC. 29. Be it further enacted, That all taxes levied and assessed under this act, be, and the same are, declared to be a tax in rem upon the lands embraced therein, which lands shall be subject to sale without further assessments, on or before the day of sale of the same in each and every
110 year, whether the owner has personal estate subject to taxation or not, and such sale shall vest in the purchaser a good and valid title to the same lands against the claims of every person whatever, having claims or title thereto, subject to redemption as hereinbefore provided.

Sale shall vest in purchasers a good and valid title.

SEC. 30. Be it further enacted, That the president of the levee commissioners, and all other officers and appointees, provided for in this act, shall, before entering upon a discharge of their duties, take and subscribe to the oath required of officers by the constitution of the State of Mississippi.

SEC. 31. Be it further enacted, That the president, levee commissioners, treasurer, or secretary, provided for in this act, shall not, during their terms of office, have any pecuniary interest, directly or indirectly, in any contract let under the provisions of this act.

SEC. 32. Be it further enacted, That all acts in conflict with the provisions of this act be, and they are hereby, repealed, and that this act shall take effect and be in force from and after its passage.

Approved March 17th, 1871.

OFFICE SECRETARY OF STATE,
Jackson, Miss.

I, James Lynch, secretary of state of the State of Mississippi, do certify that the above and foregoing is a true and correct
111 copy of the original on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Mississippi, this 10th day of July, A. D. 1871.

[SEAL.]

JAMES LYNCH,
Secretary of State.

Total number of acres in the district, not including the State lands:

Total number of acres in the district	1,356,74
Deduct for non-payment of taxes	350,000
	1,006,742
Number acres in cultivation, first-class land	103,400
	903,342
Cleared, but not in cultivation, 2nd class land	35,325
Not cleared, or third-class land	868,017

89,400	acres	1st	class	land,	assessed	at	$30	per	acre.		2,682,000
14,000	"	"	"	"	"	"	$20	"	"	.	280,000
24,000	"	"	2nd	"	"	"	$15	"	"	.	360,000
11,325	"	"	"	"	"	"	$10			.	113,325
120,000	"	"	3rd	"	"	"	$3			.	360,000
748,017	"	"	"	"	"	"	$5			.	3,740,085
											7,535,410
&t two per cent											.02
											$150,708 20

Article of agreement.

This agreement, made the day of , eighteen hundred and seventy-one, by and between , of the first part, and the Board of Levee Commissioners of the district No. 1, embra-
112 cing the counties of "De Soto, Tunica, Panola, Tallahatchie, and Coahoma," Mississippi, of the second part, witnesseth: That for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said levee commissioners, the first party hereby covenants and agrees to construct and finish, in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners, all the graduation and such other work as may be required on sections numbered in county, Mississippi, on said levee, the said work to be finished as described in the following specifications, and agreeably to the directions, from time to time, of the chief engineer, on or before the day of , A. D. 1871:

SPECIFICATIONS.

1. The levee shall be graded ten feet wide on top, except when otherwise directed by the chief engineer, with side slopes of such inclination as the chief engineer in each shall designate, usually four feet to one on the river side, and two and a half to one on the other side, and in conformity to such heights of filling as may have been or may hereafter be determined upon by the chief engineer.

2. The ground to be occupied by the levee must first be cleared of
113 trees, stumps, logs, trash, and weeds, all perishable matter, the trees and stumps being cut level with the surface of the ground. The entire surface must then be thoroughly broken with a spade or plow, in order to form a bond with the earth deposited. Then a muck ditch must be cut, four feet wide at top and two feet at bottom and four feet deep, all stumps and roots crossing it being carefully taken out and removed beyond the base of the levee. The muck ditch must be cut ten feet from the center line of the levee, on that side next to the river. As each section is thus cleared, broken, and muck ditch cut, the contractor must notify the engineer in charge, when he will measure the contents of the ditch, and then set stakes on each side of the centre at the proper distance from the base of the levee; but in no case will these stakes be set until the clearing, surface-breaking, and muck ditch are done as above described, and at least a section in advance of the embankment, and no embankment put up without this previous preparation, or before the side stakes are set, will be estimated or paid for. As soon as the

work is staked, the muck ditch must be filled in again with buck-shot earth or clay obtained from without the base of the levee.

3. When the ground is prepared, as required by article 2, the embankment will be commenced, and must be formed in uniform
114 layers not exceeding three feet in thickness. The slopes shall in all cases be commenced full out to the side stakes, and carried regularly up as the embankment progresses, so that when the necessary allowance for settling shall have been added to grade at top it will give the required width of ten feet for upper base. Nothing will be paid for settling, but its cost will be included in the price paid for the levee, as estimated up to true grade. If the levee be found deficient in height, slopes, or base, or not to have the full settling on top and slopes, the contractor must go over it immediately and correct all deficiencies, when the engineer in charge will run a test-level over it to see that all is right.

4. In procuring material for the levee, the place will be designated by the engineer in charge—always on the river side, unless otherwise directed; and in excavating and removing it, care must be taken to injure and disfigure the land as little as possible. In no case must it be obtained within twelve feet of the base of the levee on the river side, and the slope of the pit next to the embankment must not be less than two to one. If, from unavoidable causes, it becomes necessary to procure material on the inside of the levee, it must not be taken within sixty feet of the base; but it is not to be taken from the inside at all, unless forced by high water or some insuperable difficulty, and
115 then only upon the written order of the chief engineer, designating the place.

At intervals of one hundred feet a berme must be left across the borrow-pits to prevent the flow of a current along the levee. All levees shall be estimated in embankment, and not in excavation, and to be paid for by the cubic yard.

5. All earth designed for embankment must be entirely divested of roots, trash, and all other perishable matter.

6. In cutting drains or new channels for streams, they shall be cut at such distance from the levee as the chief engineer may require.

7. The line of levee or the gradients may be changed if the chief engineer shall consider such change necessary and expedient; and for any considerable alterations, the injury or advantage of the contractor will be estimated, and such allowance or deduction made in the prices as the chief engineer may deem just and equitable. The chief engineer may also, on the conditions last recited, increase or diminish the length of any section.

8. No charges shall be made by the contractor for hindrances or delays from any cause, in the progress of any portion of the work in this contract, but it may entitle him to an extension of the time allowed for the completion of the work, sufficient to compensate for the de-
116 tention, to be determined by the chief engineer.

9. All damage or injury to the work, resulting from flood or other cause, shall be sustained by the contractor until finished and received by the chief engineer; and no work shall be received until fully and completely finished in accordance with the above specifications.

10. The above specifications, if misunderstood, will be fully explained by the engineer in charge; but if neglected, no measurement or estimate will be made on the work until they are complied with.

On or about the first day of every month during the progress of the work, an estimate shall be made of the relative value of the work done,

to be judged of by the chief engineer, and upon his certificate of the amount, audited by the president and countersigned by the secretary, being presented to the treasurer, four-fifths of the amount of said estimate shall be paid to the first party, provided the amount due on said estimate to the first party shall be more than hundred dollars.

And when all the work embraced in this contract is completed agreeably to the specifications and in accordance with the directions, and to the satisfaction and acceptance of the chief engineer, there shall
117 be a final estimate made of the quality, character, and value of said work, agreeably to the terms of this agreement, when the balance appearing due to the first party shall be paid to , upon giving a release, under seal, to the said levee commissioners from all claims or demands whatsoever growing in any manner out of this agreement.

It is further agreed and understood that the work embraced in this contract shall be commenced in from this date, and prosecuted with such force as the chief engineer shall deem adequate to its completion within the time specified; and if at any time the first party shall refuse or neglect to prosecute the work with a force sufficient, in the opinion of the chief engineer, for its completion within the time specified in this agreement, then, and in that case, the president of the said board of levee commissioners may employ such number of workmen, laborers, and overseers as may, in the opinion of the chief engineer, be necessary to insure the completion of the work within the time hereinbefore limited, at such wages as he may find it necessary or expedient to give, pay all persons so employed, and charge the amount so paid to the first party, as for so much money paid to said first party on this contract, or the chief engineer may, at his discretion, for the failure to prosecute the work with an adequate force, for non-com-
118 pliance with his directions in regard to the manner of constructing it; or for any other omission or neglect of the requirements of this agreement and specifications on the part of the first party, declare this contract, or any portion or section embraced in it forfeited, which declaration and forfeiture shall exonerate the second party from any and all liabilities and obligations arising under this contract, the same as if this agreement had never been made, and any amount reserved upon any work done by the first part' may be retained forever by the second party.

And it is mutually agreed and distinctly understood that the decision of the chief engineer shall be final and conclusive in any dispute which may arise between the parties to this agreement, relative to or touching the same, and each party hereby waives all right of action, suit, or other remedy in law or otherwise, by virtue of the said covenants, so that the decision of the chief engineer shall, in the nature of an award, be final and conclusive on the rights and claims of said parties.

In witness whereof the parties have signed and sealed the same, the day and year first above written.

[SEAL.]
[SEAL.]
[SEAL.]

119 EXHIBIT No. 3.

Articles of agreement between H. A. Partee and J. W. Stancil, and the president and Board of Levee Commissioners of Levee District No. 1, State of Mississippi. Ex. 3.

This agreement, made this twenty eight' day of September, A. D. 1871, by, and between H. A. Partee, of the city of Memphis and State of Tennessee, and J. W. Stancil, of the city of Helena, and State of Arkansas, of the first part, and the Board of Levee Commissioners, of District Number (1) one, of the second part; the said district embracing the counties of De Soto, Tunica, Tallahatchie, Panola, and Coahoma, Mississippi:

Witnesseth, that for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said levee commissioners, the first party hereby covenants and agrees to construct and finish, in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners, all the graduations and such other work as may be required on Flower Lake levee, in Tunica County, Mississippi; also the pass on the Yazoo Pass levee, in Coahoma County, Mississippi; also the Shelby Ridge and Port Royal levees, in Coahoma County, Mississippi.

The said work to be finished as described in the
120 specifications, and agreeably to directions, from time to time, of the chief engineer, on or before the following times, to wit: Yazoo Pass levee, in Coahoma County, to be finished on or before the tenth of December, A. D. 1871. Yazoo Pass levee.

The Delta levee, in Coahoma County, on or before the first of January, A. D. 1872. Delta levee.

The Port Royal levee, in the same county, on or before the first of January, A. D. 1872. Port Royal levee.

The Flower Lake levee, in Tunica County, on or before the first of February, A. D. 1872. Flower Lake levee.

The Shelby Ridge levee, in Coahoma County, on or before the first of February, 1872. Shelby Ridge levee.

The said party of the second part, agree to pay to the party of the first part, for the work above enumerated, the following per cubic yard in bonds at the rate of ninety (90) cts. on the dollar:

For the Flower Lake levee forty-five cents per cubic yard.

For the Yazoo Pass levee sixty-five cents per cubic yard.

For the Delta levee forty-five cents.

For the Shelby Ridge levee forty-five cents per cubic yard.

For the Port Royal levee forty-five cents per cubic yard.

All the estimates to be made monthly, and when made bonds issued in accordance with the estimates. The said party of the first part further agree to commence active operation on the Yazoo Pass and Delta levees on or before the fifteenth of October, A. D. 1871.

121 All sinkage shall be paid for by the party of the second part.

In testimony whereof we have hereunto set our hands and seals the day and year first above written.

Contractors not to be held liable for unavoidable causes.

HIRAM A. PARTEE, [SEAL.]
J. W. STANSELL, [SEAL.]
Contractors.

STATE OF TENNESSEE,
City of Memphis:

COMMISSIONER'S OFFICE.

I, Hunsdon Cary, commissioner of the State of Mississippi, duly appointed by the governor thereof, for the State of Tennessee, to reside in the city of Memphis, and take acknowledgements and proof of the execution of deeds, or other conveyances, or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths and take and certify depositions, etc., to be used or recorded in said State of Mississippi, do certify that on this day personally appeared before me J. W. Stansell, to me known to be the individual named in and who excuted the annexed contract, and did acknowledge that he executed the same for the consideration and purposes therein mentioned.

Given under my hand and official seal this 28th day of September, 1871.

[SEAL OF COMMISSIONER.] HUNSDON CARY,
Commissioner for Mississippi in Tenn.

122 EXHIBIT No. 4.

Articles of agreement between E. A. Lindsey and the president and Board of Levee Commissioners of District No. 1, State of Mississippi.

This agreement this twenty-eighth day of September, A. D. 1871, by and E. A. Lindsey, of the first part, of the county of Coahoma, and State of Mississippi, and the Board of Levee Commissioners of District No. 1 (one), embracing the counties of De Soto, Tunica, Tallahatchie, Panola, and Coahoma, Mississippi, of the second part, witnesseth:

That for and in consideration of the payments and covenants hereinafter mentioned to be made and performed by said levee commissioners, the first party hereby covenants and agrees to construct and finish, in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said levee commissioners, all the graduations and such other work as may be required on Willow Lake levee, Coahoma County, *Coahoma County*, Mississippi. The said work to be finished as described in the specifications, and agreeably to directions from time to time of the chief engineer, on or before the first day of February, A. D. 1872.

The said party of the second part agree to pay to the party of the first part, for the work above mentioned, forty-five cents
123 in bonds, or twenty seven cents in cash. All estimates of embankment or excavation to be made monthly.

In testimony whereof we have hereunto set our hands and seals the day and year first above written.

(Signed) E. A. LINDSEY. [SEAL.]

I certify that the foregoing is a true copy of the original.

A. R. HOWE,
Sec't'y Miss. Levee Board, Dist. No. 1.

EXHIBIT No. 5.

(On margin:)
Approved and ordered paid.

M. S. ALCORN, *President.*

APRIL 5TH, 1872.

ENGINEER'S OFFICE,
Austin, Miss., June 12th, 1872.

Maj. M. S. ALCORN,
Pres't Board Com'r Miss. Levee, District No. 1:

SIR: The following is the estimated amount of work done and material furnished by Partee and Stansell, contractors, on the levee in Tunica and Coahoma Counties, Miss:

	616,332	cub. yd's	embankment.	
	23,384	" "	muck ditch.	
	739,916	" "	@ at 45c	$287,872 20
124	99,964	" "	embankment	
	572	" "	muck ditch.	
	100,536	" "	@ 65c	65,348 40
95 acres clearing @ $45				4,275 00
				$357,495 60

I certify the above to be correct.

B. MICKLE,
Special Eng'r Miss. Levees.

EXHIBIT No. 6.

Tabular statements of amounts claimed by Partee and Stansell, and the amounts allowed in the estimates of Kirkpatrick, former chief engineer, and of B. Mickle, chief engineer, Miss. Levees, Dist. No. 1.

Name of levee.	P. and S. claim.	Kirkpatrick's estimate.	Mickle's estimates.
(1) Flower Lake levee	261,500 c. yds.	247,445 c. yds.	235,183 c. yds.
Add for sinkage	5,000 " "		
(2) Willow Lake levee	190,000 " "	185,107 " "	169,954 " "
Add for sinkage	11,000 " "		
(3) Shelby Ridge levee	220,000 " "	210,172 " "	197,928 " "
Add for sinkage	5,000 " "		
(4) Port Royal levee	44,800 " "	44,821 " "	36,651 " "
(5) Yazoo Pass levee	96,000 " "		52,932 " "
Add for sinkage	20,000 " "		2,000 " "
(6) Gordon Break	51,000 " "		13,876 " "
(7) 2nd break, below pass	35,000 " "		8,467 " "
Repairs on old levee between Yazoo Pass & Delta	15,000 " "	10,728 " "	10,300 " "
125 Add for hole at Gordon Break			23,261 " "
Clearing & grubbing	@ 45c, 200 acres.		95 acres.

In Mickle's estimate, a full allowance was made for sinkage, and the amount included in the above estimate, except as to the Yazoo Pass.

In Mickle's estimate, shrinkage or settling was added, but according to the specifications, it should not have been done.

EXHIBIT No. 7.

This agreement made and entered into this 4th day of October, 1872, between of the Board Levee Commissioners of Miss. Levee District No. 1, of the first part, and Partee and Stansell, contractors on levee in said district, of the second part, witnesseth:

That whereas said party of the first part have heretofore made full and complete settlement for all work done on said levee by said party of the second part, as evidenced by their receipt acknowledging the same, and said party of the second part do now come forward and complain that injustice was done them in said settlement, and it being the desire of the party of the first part to do full justice to all men, it is hereby agreed that the party of the second part shall designate an engineer who shall proceed, with the chief engineer of this board,
126 to measure all work done by said party of the second part on said levee, and render to the parties to this agreement, an estimate of the amount due to the party of the second part for such work according to the contracts entered into for the completion of the same; and it is further agreed that should said estimate exceed the estimate made by the special engineer of this board in the month of June, 1872, the party of the first part shall pay to said Partee and Stansell, party of the second part, the amount of such excess, and all the expenses of this measurement shall be borne by the board, but if the said estimate shall be less than the estimate of the said special engineer in June, 1872, then said party of the second part shall refund to said party of the first part the amount of such deficit, and pay all the expenses of this measurement, and it is further agreed that said Partee and Stansell shall deposit in the First National Bank of Memphis, twenty-five thousand dollars of the bonds of said levee district No. 1, in trust for the payment of said deficit and expenses in the event said estimate shall fall short of the said estimate of the special engineer. It is further agreed that the party of the second part shall designate an engineer, which engineer shall suggest a third engineer who shall be acceptable to the chief engineer of this board, and the said engineers so selected shall, with the chief engineer of this board,
127 constitute a board of arbitrament for the adjustment of all questions of difference, the agreement of any two to be final.

In the adjustment of questions pertaining to this measurement, the contractors shall have the privilege of introducing all proper evidence, oral or written, of notes, profiles, or other evidence, which testimony may be rebutted by the president of the board, this testimony being allowed to give the engineer's information as to the fills or any other fact not perceptible to the engineers, to which testimony the engineers shall give such weight as they may think the same entitled to receive.

Witness our hands and seals this the 4th day of October, 1872.

(Signed) M. S. ALCORN, [SEAL.] *Pres't.*

(Signed) PARTEE AND STANSELL. [SEAL.]

(Copy.)

FRIAR'S POINT, MISS., *Dec. 5th*, 1872.

Col. GEORGE B. FLEECE:

DEAR SIR: There are some necessary preliminaries to be arranged before we can enter upon our duties as a board of arbitrament, one of which, the deposit of bonds, was not arranged to the satisfaction of Maj. Alcorn and myself; and we go to Memphis on behalf of the
128 levee board to have the matter adjusted. If it is satisfactorily arranged, as I doubt not it will be, the measurement will go on, otherwise, I shall feel constrained to decline any further action. In regard to the measurement, having full confidence in yourself and Capt. Cobb, I will sanction your action so that you can go ahead with it until my return, which I hope will be on Saturday.

Respectfully, y'rs,

(Signed) B. MICKLE.

Chief Eng'r, Miss. Levees.

(Copy.)

In accordance with the terms of an agreement entered into on the 4th day of October, 1874, by the Board of Levee Commissioners of Mississippi Levee District No. 1 of the first part, and Partee and Stansell, contractors on levees in said district of the second part, B. Mickle on the part of the said board, Geo. B. Fleece on the part of Partee and Stansell, and R. L. Cobb designated by said Geo. B. Fleece, with the consent of said B. Mickle, constitute the board of arbitrament referred to in said agreement. It is agreed by the undersigned that the following memoranda shall govern the said board of arbitrament in adjudicating all matters brought before them:

1st. In taking testimony they will be governed by the rules practised by the courts of justice in this State.

129 2nd. Inasmuch as by the terms of said agreement, the first party can only rebut the testimony introduced by the second party, it is agreed that said second party shall before further proceeding with the measurement, notify the first party in writing what points they expect to prove and the character of the evidence proposed, so that the said first party may be ready with their rebutting character.

3rd. It is understood that the specifications referred to in the original contract made by said Partee and Stansell, with said board of levee commissioners for the construction of levees, are the printed specifications hereto attached, which are those usually referred to in levee contracts in this district.

4th. It is further understood and agreed that said board of arbitrament shall procure such assistants, laborers, and materials as they may deem necessary or expedient and fix the compensation of such assistants and laborers, and the amount thereof shall be paid by said board of levee commissioners or Partee and Stansell as by them may be decided, such payment to be made upon the certificate of said board of arbitrament in amount and at the times by them to be designated. And with a view to the determination of the compensation of the several members of said board of arbitrament for services by them rendered, it is agreed that upon completion of the work or the permanent suspension thereof, the
130 several members of said board of arbitrament shall be immediately paid their several bills for services rendered, said bills to

be certified and approved by each member of said board of arbitrament; and whereas for the payment of said bills and expenses hereinbefore referred to the said board of levee commissioners, and the second party, Partee and Stansell, are jointly and severally bound, it is understood and agreed that either party paying the same or any part thereof shall be credited with by the amount thereof so paid and approved as above required, and upon final settlement between said levee board and Partee and Stansell, the said payments shall be adjusted between them as the result of the estimate herein contemplated shall indicate.

But it is understood that if the charges made by the said members of the said board of arbitrament shall be declared unsatisfactory to either of said parties then the same shall be referred to Minor Merriweather, esq., of Memphis, whose decision touching the same shall finally determine the amount of the same and settlement shall be immediately made in accordance therewith.

(Signed) W. S. ALCORN, *Pres't.*
(Signed) PARTEE AND STANSELL.

FRIAR'S POINT, MISSISSIPPI, *Dec.* 12*th*, 1872.

131 (Copy.)

COAHOMA COUNTY, MISS., *Dec.* 12*th*, 1872.

To president Board of Commissioners, Levee District No. 1:

SIR: We will introduce proof before the court of arbitration touching the matters following:

1st. The estimates rendered by the engineers in charge of the work during its progress, their several orders touching the same, and the legal and equitable value of the same, in any matter of pecuniary loss or gain arising therefrom.

2nd. The probable diminution of cubic quantities of embankments by reason of wastage, shrinkage, sinking, packing, etc., from the time when constructed till now.

3rd. The character of foundations of the several levee sections at the pass, Gordon Break, and numerous sloughs and bayous, and the probable amount of material required to fill the same over the amount that at any time has appeared within the surface cross-sections thereof.

4th. The clause in the contract touching shrinkage, its meaning, and the adjudication of that question by the chief engineer of your
132 board prior to and about simultaneous with the signing of the original contract.

5th. The amount expended by us for days' work on the pass levee, the probable value of a day's work, and the value of this exhibit as a basis for determining the amount of work done at that point.

6th. The amount and value of work done by order of your engineer, or engineers, outside of the true levee line, together with some items of extra work.

7th. The quantity of work done, as shown by the original field-notes and estimates, and the value of same, as matters of proof.

8th. The fact that said engineers have had no inducement of any character whatever for which we are responsible or of which we have a knowledge, to render us an overestimate of our work.

9th. The damage done us by the repeated refinishing of work under orders of your engineers.

10th. The payments made to us for the Willow Lake levee in bonds at par, and the question of right in this matter.

11th. The delay of a final estimate, of various payments, and the damage to us arising therefrom.

12th. Representations made to us by your agents touching the Taylor and Lindsey contract, and the effect thereof.

Very respectfully, &c.,

PARTEE AND STANSELL.

133

(Copy.)

DELTA, MISS., *Dec. 13th*, 1872.

Col. GEORGE B. FLEECE,
Civil Engineer:

DEAR SIR: In arranging the preliminaries to our organization as a board of arbitrament on the question of difference between the levee board of this district, and Messrs. Partee and Stansell, I am notified that claims will be made and testimony offered clearly in contravention of the terms of the agreement from which our authority is to emanate, and as such proceeding would render our decision unsatisfactory and void, I cannot proceed further in the matter unless it is distinctly understood that the following provisions of the contracts and agreements entered into by the said parties, and on which our authority is understood to be based shall be strictly observed, viz:

1st. That no shrinkage or settling is to be paid for.

2nd. That no estimate shall be made of any work which has not been completed in accordance with the contracts and specifications entered into for its construction, until it shall be so completed, and should
134 any improper materials be found in the levee, it shall be removed, and said levee reconstructed in accordance with the original contract before it shall be received and estimated.

3rd. That no oral or written evidence shall be taken except in relation to the measurement of levees, and then only in cases where ocular demonstration or actual measurement is impossible by reason of the object sought to be measured being hidden under the base of the embankment or other object.

Very respectfully,
(Signed)

B. MICKLE,
Ch'f Eng'r Miss. Levees.

(Copy.)

DELTA, MISS., *Dec. 13th*, 1872.

B. MICKLE,
Chief Engineer Miss. Levees:

DEAR SIR: In your communication of this date, addressed to me as "civil engineer," you assume that a board of arbitrament does not exist. I think that such a board does exist, fully organized, duly commissioned and instructed, and refer you to your appointment by
135 your board, my nomination of R. L. Cobb, and your acceptance of him as third party to said board to the contract between your board and Partee and Stansell, dated Dec. 12th, in which we are recognized as such board, and the memoranda which shall govern said board in adjusting all matters brought before them fully set forth, and to your co-operation with us in the field, at work for several days, in harmony as a member of said board.

Then the board of arbitrament is in existence, and I no longer know

you in the business before us, otherwise than as a coarbitrator, and of consequence, cannot properly go back to matters by you deemed "preliminary" to the organization of said board.

2nd. But admitting that you are right in the position denied, that no board has been organized, then I deem any step preliminary thereto, which involves the expression of opinion upon any point connected with the business likely to come before said board for adjustment or determination, as illegal and improper.

I am ready for any duty appertaining to my office as a coarbitrator in the matters refered to us (B. Mickle, R. L. Cobb, and George B. Fleece) fully organized and commissioned, a board of arbitrament by the joint action, contract, &c. of the Board of Commissioners Miss. Levee District No. 1, Partee and Stansell, and our several proper
136 acts up to date in harmony with the contracts perfecting the organization thereof.

I am therefore ready for official action, and that our coarbitrator, R. L. Cobb, may be informed of the present status of affairs, I, as in duty bound, have shown him your letter and this my reply thereto, and have requested his prompt action in the premises as his duty as coarbitrator may direct.

Very respectfully,
(Signed)

GEO. B. FLEECE,
Member of Board of Arbitrament.

(Copy.)

FRIAR'S POINT, MISS., *Dec. 17th*, 1872.

Col. GEORGE B. FLEECE, *Civil Engineer:*

DEAR SIR: Your communication dated 13th inst., but which was handed me by you on yesterday, is unsatisfactory because it ignores the whole matter of my note of the same date, to which it purports to be a reply.

You err in supposing that a board of arbitrament to adjust questions of difference between the levee board of the one part, and Messrs. Partee and Stansell of the other part, has been organized, nor will it be until the contracts and agreements from which its authority is to be derived, are fully understood by all the proposed mem-
137 bers of it. You err also in saying I have accepted Cap't Cobb as the third engineer. In order that no delay might occur in selecting a third member of said board, I informed you that I knew of no reason why he would not be acceptable to me, when the preliminaries were satisfactorily arranged. I had no right to accept him officially then, as I had no authority to act at all until they were settled. It was expressly understood by Mr. Partee and myself in Memphis that the board of arbitrament could not and would not be organized until your suggestion and my acceptance of the third engineer had been officially made in writing.

As to our working together for several days, you are aware that, to avoid the loss of time, while the preliminaries were being arranged, I consented that the measurement should go on unofficially, to be ratified when the organization was completed.

Respectfully yours,
(Signed)

B. MICKLE,
Ch'f Eng'r Miss. Levees.

(Copy.)

FRIAR'S POINT, MISS., *Dec. 17th*, 1872.

B. MICKLE, *Ch'f Eng'r, &c.:*

138 I desired to join you in a reply to the note of our coarbitrator, R. L. Cobb, dated Dec. 13th, but from yours to me, am led to conclude that you ignore him and have no reply to him.

I also understand that you refuse to proceed with the work assigned us as a board of arbitrament.

I give you this notice that I will, if joined by any one member of said board, proceed on to-morrow a. m., make the measurements and award and claim therefor, the exact value it would have if made by full board.

Yours, resp'y, &c.,
(Signed) GEO. B. FLEECE,
One of Board of Arbitrament.

The following is a copy of the note referred to:

(Copy.)

DELTA, MISS., *Dec. 13th*, 1872.

B. MICKLE and GEO. B. FLEECE,
Members of Board of Arbitrament:

GENTLEMEN: I am ready and anxious to proceed with the duties imposed upon us, "B. Mickle, Geo. B. Fleece, and R. L. Cobb a board of arbitrament," organized by contracts between the Board of Levee Commissioners of Mississippi Levee District No. 1, and Partee and Stansell, dated October 4th, 1872, and December 12th, 1872, and

139 I hereby demand the reasons why we are not proceeding with our duties as a board of arbitrament.

Respectfully,
(Signed) R. L. COBB,
Member of Board of Arbitrament.

(Copy.)

MEMPHIS, *Jan. 8th*, 1873.

J. L. ALCORN, Esq.,
Ag't for Partee and Stansell, Contractors:

DEAR SIR: I am instructed by the Mississippi Levee Board, District No. 1, to inform you that they are ready now, as they always have been, to carry out in good faith their contract with Messrs. Partee and Stansell in reference to remeasurement of levees.

Respectfully, yours,
A. R. HOWE,
Secretary Miss. Levee Board, District No. 1.

(Copy.)

MEMPHIS, TENN., *Jan'y 8th*, 1872.

GENTLEMEN: Your note of this date signed and conveyed to

140 me by your secretary, Maj. Howe, is received. In reply thereto I beg to say in behalf of Messrs. Partee and Stansell, that in compliance with their contract of the 4th of October last, they made in

good faith a deposit of the bonds required; that they nominated Geo. B. Fleece as the engineer selected by them under that contract; that Mr. Fleece nominated R. L. Cobb as the third engineer; that Major Mickle, the engineer on the part of the board, expressed his satisfaction with the nomination of Mr. Cobb; that the three engineers thus chosen in accordance with the contract of October the 4th, proceeded to the lower end of the work in Coahoma County, and there commenced the remeasurement, and after working the most of three days, Major Mickle, the engineer selected by the board, abandoned the work and refused to proceed.

I am requested by Messrs. Partee and Stansell to say that they stand ready to resume the measurement and carry out and abide by all its parts the contract of October the 4th.

I am requested by the parties whom I represent to ask an immediate response as to the reason of this abandonment, and that your honorable board may state any objections that may exist to the immediate resumption of the work. Awaiting your reply, I am, gentlemen,

Very respectfully, yours, &c.,

J. L. ALCORN,
Ag't and Att'y for Partee and Stansell.

To the honorable Miss. Levee Board, District No. 1, present.

241 (Copy.)

MEMPHIS, *Jan. 8th*, 1872.

J. L. ALCORN, *Ag't and Att'y for Partee and Stansell:*

DEAR SIR: I am instructed by the Board of Levee Commissioners, District No. 1, Miss., in reply to your communication of this date, to say that they do not recognize as a fact your statement that the three engineers refer'ed to in the contract between Partee and Stansell and themselves, were chosen in accordance with the provisions of said contract, and to again repeat their willingness to proceed in the matter in the manner that the contract requires.

Very resp't,
(Signed) A. R. HOWE,
Secretary Miss. Levee Board, District No. 1.

(Copy.)

MEMPHIS, TENN., *Jan'y 8th*, 1872.

GENTLEMEN: Your reply to my note of this date, which reply was made to your note of like date, is received.

I am instructed by Messrs. Partee and Stansell to rejoin as follows:

142 They now reaffirm that they have made the deposit of the bonds as by their contract they were bound to do. That they nominated and appointed George B. Fleece as the engineer on their part, and that said Fleece nominated and submitted to Major Mickle R. L. Cobb, the third engineer, and that Major Mickle expressed his consent, and these three constituted a board, competent when they went upon the work, and a board still competent to act. I am requested to ask your honorable board to specify your objection to their proceeding. Does it lie as to the deposit? If so, please point out the objection. The bonds are now on deposit to the credit of your president, and surely you can have no objection to this.

Does your objection lie to the nomination of Mr. Fleece? They do not conceive your right under the contract to thus object; but if objections exist, please state them that they may, if possible, be removed. Does the objection lie to the appointment of Mr. Cobb? If so, please state them, that we may, if possible, remove them.

Messrs. Partee and Stansell have shown their earnest desire to carry out their contract in good faith. They have done all that up to this time they could do, and if you will state your objections to the going forward they stand ready to satisfy your demands, if it is possible to do so, even though they may consider your demands oppres-
143 sive. Awaiting your reply to this note No. 2—

I am, very respectfully,
(Signed) J. L. ALCORN,
Ag't and Att'y for Partee and Stansell.

Miss. Levee Board, District No. 1, present.

(Copy)

MEMPHIS, *Jan'y 9th*, 1872.

J. L. ALCORN,
Ag't and Att'y for Partee and Stansell:

DEAR SIR: I am instructed by the Miss. Levee Board, District No. 1, to reply to your note No. 2 of this date, to say that they deem it useless to multiply correspondence; that they take the position that the engineers were not appointed in accordance with the provisions of the contract, and they call upon your clients to come forward at once and proceed, as by the provisions of the contract they are required to do, to the end that justice may be done all parties concerned. I am further directed to inform you that B. Mickle, chief engineer of the board, holds himself in readiness to meet your clients and yourself in regard to the matter pertaining to our correspondence.

Very respectfully, &c.,
(Signed) A. R. HOWE,
Secretary Miss. Levee Board, District No. 1.

144 (Copy.)

MEMPHIS, TENN., *Jan'y 8th*, 1873.

GENTLEMEN: In reply to your note, No. 3, handed us by your secretary, Major Howe, we take leave to say, that we greatly regret that we are not able, with all the skill at our command, to draw from you one single direct response to any question by us propounded. We made the contract which we now seek to carry out on the 4th of October last. Since then not a day has elapsed that we have not stood ready and urgent to, not only to comply with our part, but to persuade and urge you to the performance of your part.

Your engineer was named in the contract. We at once named Mr. George B. Fleece as the engineer on our part. We then went forward to deposit the bonds. Finding the president of the bank, named in the contract, not disposed to receive the bonds as trustee, we made the deposit, nevertheless, in a way that we thought a substantial compliance. The form of this deposit being afterward objected to, we, to remove all possible objection, deposited the bonds to the credit of the president, as before stated, of your board. George B. Fleece, the engineer on our part nominated, as he informs us, R. L. Cobb, as the third

engineer. He stated to us that Major Mickle expressed himself
145 satisfied with Mr. Cobb as the umpire in the premises. The three engineers thus chosen, comprising the board, proceeded together, travelled together, over a hundred miles, and commenced the work. Major Mickle, the engineer on your part, now thought the order of testimony and the manner of going forward should be more correctly defined, and straightway he prepared an agreement in writing, in which he recognized Messrs. Fleece and Cobb, in conjunction with himself, as a board organized for the work in hand. In this writing, named himself, Fleece, and Cobb as the board of arbitrament chosen under the contract referred to. This paper was given us to sign before further proceedings could be had. That no complaint could be made of us, we signed the contract, and the work began. Soon after this Major Mickle withdrew. Messrs. Cobb and Fleece now addressed your president, desiring to be informed why the work should not go on. In reply to them he made no objection to the organization of the board, but stated vaguely that certain matters had arisen which made it necessary that your board should be appealed to. He suggested that we should travel to Memphis and be present on the 30th of December last. We came, and since that day we have patiently awaited your pleasure in the premises. We now again protest against this trifling with our complaints. Your replies to our inquiries are in generalities. You avow your readiness, and yet you refuse to move. That we may leave nothing undone on
146 our part, we have addressed a note to Major Mickle. We will not yet give up the hope of an amicable adjustment, awaiting your reply. We are, gentlemen, your very ob't servants,

(Signed) PARTEE AND STANSELL,
(Signed) Per J. L. ALCORN, *Atty.*

To Mississippi Levee Board, District No. 1.

(Copy.)

MEMPHIS, TENN., *Jan'y 8th*, 1873.

DEAR SIR: On the 4th of October last a contract was entered into between the Board of Levee Commissioners of District No. 1 of the State of Miss., and Messrs. Partee and Stansell, relating to the remeasurement of certain levee work heretofore done and performed by the said Partee and Stansell under contract in said district. Under the provisions of that contract you were chosen the engineer on the part of the board of levee commissioners. We chose on our part George B. Fleece. He informs us that he chose R. L. Cobb, as the third engineer, and that you declared yourself satisfied with the selection—in other words, that he was acceptable to you. Soon after this you made an objection that the deposit of bonds was not satisfactory to you. We at once placed the deposit in the order suggested by yourself. After this you began a journey with the engineers, who were to compose,
147 in conjunction with yourself, a board to perform the work. The journey was completed and the work began. You expressed yourself satisfied, saying you had "full confidence" in both Fleece and Cobb, but you afterwards abandoned, for reasons unknown to us, the work given you to do. In answer to an enquiry made by Messrs. Fleece and Cobb as to the cause of your abandonment, your president replied that it was necessary before proceeding further that the board of commissioners should be convened, and appointed the 30th of December last as the day on which they should meet the board in Memphis.

Messrs. Fleece and Cobb, as directed, came, and since that time they have remained and have sought to be informed by the board as to the difficulty in the way of a going forward; the board now again being inquired of by us refers us to you, and we appeal to you that you may now at once resume the work of remeasurement, that we may show the wrongs that have been done us. If any performance on our part is wanting, be good enough to point it out, that if in error or under misapprehension, we may remedy the error or correct the misapprehension. Please state directly your answer to the following enquiry:

1st. Is the deposit of bonds satisfactory?

2nd. Have you objection to Geo. B. Fleece that you can properly make? If so, state it.

148 3rd. Have you objection to R. L. Cobb?

State fully any reason you may have why the work shall not be resumed at once, and greatly oblige us.

Very respectfully,

(Signed) PARTEE AND STANSELL,

(Signed) Per J. L. ALCORN, *Ag't & Att'y.*

Maj. B. MICKLE, Engineer Miss. Levee Board, present.

(Copy.)

MEMPHIS, TENN., *Jan'y 9th*, 1873.

Hon. J. L. ALCORN,

Ag't and Att'y for Partee and Stansell, Contr's:

DEAR SIR: Your communication of yesterday was received late in the evening, and I hasten to reply this morning.

At the Oct. meeting of the board, in addition to the duties imposed upon me in the matter of remeasuring Messrs. Partee & Stansell's work, I was ordered to make certain surveys and other work with a view to building new and repairing old levees. On asking instructions from the board as to which I should give my attention to in preference, I was ordered to attend to my regular duties in constructing and repairing levees, as of primary importance, and when these permitted to proceed to the organization of the board of arbitrament, and the remeasurement provided for in the agreement between them and Messrs.

149 Partee and Stansell, dated October the 4th, 1872, and was further instructed to take no step in the matter until the deposit of bonds was made as provided for. My regular duties, which were considered by the board as of primary importance, occupied my time from the date of the agreement until about the first of December, and in the mean time Capt. Stansell intimated to me that he and Mr. Partee would probably designate Col. Geo. B. Fleece as their engineer, and introduced him to me, and in a casual conversation with him, he asked my opinion of Captain Cobb with reference to suggesting him as the third member of our proposed board of arbitrament. I said to him that Captain Cobb was an utter stranger to me, but from what I had heard of him, I knew of nothing that would render him unacceptable to *him*. On the 5th of December I met Capt. Stansell in Friar's Point, when he handed me a certificate of deposit of bonds, which was not made in accordance with the terms of the agreement of October 4th, and I informed that I had no authority to act until that preliminary condition was complied with, and went immediately to Memphis, in company with Major Alcorn, to have it so arranged that I might be vested with the requisite authority to pro-

ceed in the matter. I learned that it was impossible for Messrs. Par-
150 tee and Stansell to comply with this preliminary condition, and I agreed to accept it as complied with, if the bonds were delivered to the board or their president, Major Alcorn, who was present; which was done by Mr. Partee, representing Partee and Stansell. At the same time it was distinctly understood and agreed by Mr. Partee, representing Partee and Stansell, and myself, that the board of arbitrament had no legal existence, and could not, and would not have, until the notification to me of their selection of an engineer, and his suggestion and my acceptance of the third engineer were officially made in writing. This has never been done, and no such board exists; I am, however, ready to receive such notification at any time.

In concluding your communication you request me to answer three interrogatories. The first is answered above; as to the second, no authority is conferred on me by the agreement of October 4th to object to your appointee. The third will be answered when it comes before me in proper shape for official action.

I am, very respectfully, your ob'd't servant,

(Signed) B. MICKLE,
Ch'f Eng'r Miss. Levees.

151 (Copy.)

MEMPHIS, TENN., *Jan'y 9th*, 1873.

B. MICKLE, Esq.,
Ch'f Eng'r Miss. Levees:

DEAR SIR: Replying to your communication of this date addressed to our agent and attorney, J. L. Alcorn, we have to say that we cannot agree with you as to the manner of our appointment of Col. Geo. B. Fleece as our engineer, protesting that we notified you in terms positive, that we had selected him, and accordingly our Mr. Stansell introduced him as such appointee.

From that date (about October 4th, 1872) we have acted in full accord with this fact, and your action also has accorded therewith, from the date of said notification to Dec. 13th, on which day we received the first intimation of your position "that a board of arbitration had not been organized," and your letter of this date is the first statement of the exact reason why you claim that no board of arbitration exists.

However, to meet the formalities you designate as necessary in the premises, we repeat our designation of the said George B. Fleece as our engineer, and now again notify you that we do reappoint and confirm the said Geo. B. Fleece as our engineer, who (as provided in
152 the contract of October 4th) has been from about said date to this day, and now is on the ground ready for all the duties contemplated to be performed by him as indicated in said contract of October 4th, together with all other contracts, &c., subsequent thereto.

We protest, further, that though you may have had the understanding referred to with our Mr. Partee, you are certainly estopped from requiring the "written notification" you refer to, by the main declaratory clause in the contract of Dec. 12th, which, while it solemnly declares that George B. Fleece had been appointed by us, the same declaratory clause was written by yourself, by you was presented to your president for his signature, and the same was also signed by us, and thus, it appears to us, that you have in writing of a character most authoritative, our written statement (made Dec. 12th) of the appointment you now claim has never been duly made.

We again refer you to him for the further conduction of the business contemplated to be done in the contract of October 4th, who will himself confer with you as to the question of the validity of the appointment of Capt. R. L. Cobb, a matter which we cannot ourselves question, having with yourself and the president of your board, recognized him to an extent that we think precludes disavowal now.

Very respectfully, &c.,

(Signed) PARTEE AND STANSELL.

153 (Copy.)

MEMPHIS, *Jan'y 9th*, 1873.

B. MICKLE,

Chief Eng., &c., Miss. Levees:

DEAR SIR: Understanding that you require, in addition to my verbal nomination, and my several written statements, of my selection of Capt. R. L. Cobb, as coarbitrator, that I shall hand you a more formal official written notification, I now, as the appointee of Partee and Stansell, do notify you, as the representative of the Board of Levee Commissioners of Miss. District No. 1, that I do again designate the said R. L. Cobb to act with us as third party in the "board of arbitrament" provided for, &c., in the contract of October 4th, 1872, between said levee board and Partee and Stansell.

I request also your prompt written and official acceptance of him as said coarbitrator.

Very respectfully, &c.,

(Signed) GEO. B. FLEECE.

(Copy.)

MEMPHIS, TENN., *Jan'y 9th*, 1873.

Col. GEO. B. FLEECE, *Civil Engineer:*

DEAR SIR: I am just in rec't of your note of this date sug-
154 gesting as the representative of Messrs. Partee and Stansell (from whom I had received a previous communication notifying me of your appointment) Capt. R. L. Cobb, to act with us as third party in the board of arbitrament, provided for in the contract of Oct. 4th, 1872, between said levee board and Partee and Stansell.

Since our casual conversation on the subject last fall, circumstances have arisen, which, while they do not affect his high character as a gentleman, or his standing as a brother engineer, render him unacceptable as coarbitrator in the matter referred to.

I am, very respectfully, y'r ob't servant,

(Signed) B. MICKLE,

Ch'f Eng'r, Miss. Levees.

(Copy.)

MEMPHIS, *Jan'y 18th*, 1873.

B. MICKLE,

Chief Eng'r Miss. Levees, and

Member of Board of Arbitrament:

Waiving the question as to the validity of the apointment, &c., of R. L. Cobb as a third engineer of our board of arbitrament, I now nominate the following-named gentlemen, each of whom is high in the

profession, and known to be engineers of high standing: Edward Turner, W. S. Moon, E. C. Lewis, W. F. Foster, Theo. Hartmann.

155 Either one will be acceptable to me. I request an immediate reply, accepting or rejecting. As soon as nomination and acceptance is made, I will desire to proceed again with the work.

Very resp'y, &c.,

(Signed) GEO. B. FLEECE,
Member Board Arbitrament.

(Copy.)

COAHOMA CO., MISS., *Jan'y 20th*, 1873.

DEAR SIR: Your communication of the 18th inst. was handed me by Capt. Stansell on yesterday (Sunday) morning.

Before completing the organization of the board of arbitrament provided for in the agreement of October 4th, 1872, between the levee board of this district, and Messrs. Partee and Stansell, it is necessary to have an understanding as to the scope of our authority, measurements, &c. The principal points I allude to are embraced in a communication addressed to you by me on the 13th day of December, 1872, to which I refer you.

Very respectfully,

B. MICKLE,
Ch'f Eng'r Miss. Levees.

Col. GEO. B. FLEECE, *Member Board of Arbitrament, &c., Memphis, Tenn.*

(Copy.)

MEMPHIS, *Jan'y 30th*, 1873.

B. MICKLE,
Ch'f Eng'r Miss. Levees, and Member Board of Arbitrament:

156 DEAR SIR: Your letter of 20th inst. received. You do not therein accept or reject any of my nominations of a coarbitrator, but you refer back to positions taken and demands made by you in your letter of Dec. 13th, '72. It would have been right for you to have notified me, during the long interval of my effort to dispose of what you seemed to regard the only obstacle to progress, v's. the case of Capt. R. L. Cobb, that you intended to require of me as a condition preliminary to organization of board, or even appointment of a third engineer, that I should concede the points made in said letter of Dec. 13th. But you knew on Dec. 13th, my position with regard to said points, and that I deemed your demands unreasonable, and that compliance on my part would have been dishonorable. A more consistent course would have been for you to have remitted the mere side issue as to the validity of R. L. Cobb's appointment, &c., and made your refusal to act, stand upon the ground of your present refusal.

As the matter now stands I conclude from all the facts:

1st. That you now impose on me a condition of action with me, which you have known I refused to allow more than six weeks ago.

2nd. That you regard all our acts as a board of arbitrament as done without authority.

157 3rd. That no board of arbitrament exists or ever has existed.

4th. That you demand of any one with whom you will act as coarbitrator, a pledge that he will decide certain vital points your way.

5th. That you are not ready or willing to act now.

6th. That in all you have done or will do you are acting under instructions from your board.

7th. That in fact neither you nor your board do intend that the arbitration provided for in contract of October 4th or Dec. 12th shall be carried out.

Forced to this conclusion after a faithful effort to advance the business with which we have been charged, I have no course now left me but to notify Messrs. Partee and Stansell, that having done all I could do, I will retire, leaving them with such rights as they may have under their several contracts with your board, violated by you, and that as you admit, by their order.

Very respectfully, &c.,

(Signed) GEORGE B. FLEECE,
Member of Board of Arbitrament.

H. CRAFT, and LAMAR and MAYES, *Def'dt's Sol's.*

Filed April 8th, 1873. G. R. Hill, clerk.

158 And afterwards, to wit, on the 9th day of April, 1873, an order for an injunction was made in said cause, in the words and figures following, to wit:

U. S. district court.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS. DIST. NO. 1, & OTHERS.

This cause coming on to be heard on the motion of the complainants for an injunction as prayed for in the bill of complaint, and the said motion being heard on the bill and exhibits, and the answer of the defendants and exhibits thereto, and having been argued by counsel, and considered by the court, it is ordered, adjudged, and decreed that the said defendants their officers, agents, and attorneys be, and they are hereby, absolutely enjoined and restrained from issuing to any person, other than the said complainants, the bonds of the said levee board to the amount of seventy-five thousand dollars, parcel of the sum of one million dollars of bonds which the said levee board are authorized to issue by act of the legislature of the State of Mississippi, entitled "An act to redeem and protect from overflow from the river Mississippi certain bottom-lands herein described," approved May 17, 1871. And the said defendants are further hereby enjoined and required to hold in their hands the said amount of seventy-five thousand dollars of the said bonds of said levee board, parcel of said amount of one
159 million dollars, or to deposit the same in this court to await and be subject to the final decree in this cause.

And it is further ordered that the said defendants be, and they are hereby, enjoined and restrained from receiving from the First National Bank of Memphis the bonds of said levee board to the amount of twenty-five thousand dollars, heretofore issued by said board to said complainants, and by them deposited in said bank subject to the order of the said levee board, or the president thereof, as security for the

performance by complainants of a certain agreement set forth in the said bill of complaint.

But the said complainants are required, before the said injunction shall issue, to enter into bond to the said levee board, in the penalty of thirty thousand dollars, with sufficient sureties, conditioned to pay all damages and costs which may be awarded or recovered against the said complainants by reason of the wrongfull sueing out of said injunction in case the same shall be dissolved. The said sureties may be residents of the State of Tennessee, and in that case they may justify before any United States commissioners in the said State.

And it is further ordered that if the said defendants will enter into bond to said complainant in the penal sum of forty thousand dollars, with sufficient sureties, conditioned that they will abide by and perform the decree of the court in this cause, and pay to said complainants any sum that may be awarded or adjudged in their favor
160 against the said defendants, or any of them, then the injunction hereby granted shall be dissolved. The complainants are allowed fifteen days in which to give the injunction bond, for which time the present injunction is continued in force as to the said sum of seventy-five thousand dollars of bonds, this April 9, 1873.

R. A. HILL, *Judge*.

Filed 9 Apr., 1873. G. R. Hill, clerk.

And afterwards, to wit, on the 21st day of April, A. D. 1873, an injunction bond was filed in this cause, in words and figures following, to wit:

Know all men by these presents that we, H. A. Partee, J. W. Stansell, A. Patterson, J. G. Cummings, Amos Woodruff, and Robert Huie, are held and firmly bound unto the Levee Board of the State of Mississippi District No. 1, in the sum of thirty thousand dollars, for the payment whereof we bind ourselves, jointly and severally, firmly by these presents, sealed with our seal', and dated the 17th day of April, A. D. 1873.

Wher'as the above-bounden Partee and Stansell have obtained the order of the district cou't of the United States for the northern district of Miss., sitting in equity, enjoining the said levee board from issuing their bonds to the amount of seventy-five thousand dollars, and for other purposes, as expressed in the said order, which injunction is to issue on the giving of this bond:

Therefore, the condition of this obligation is such that if the said Partee and Stansell shall pay all damages and costs which may be awarded or recovered against them by reason of the wrongful suing out of said injunction in case the same shall be dissolved, then the above obligation to be void; otherwise to remain in full force and virtue.

HIRAM A. PARTEE.	[SEAL.]
J. W. STANSELL.	[SEAL.]
ALEX. PATTISON.	[SEAL.]
J. G. CUMMINGS.	[SEAL.]
A. WOODRUFF.	[SEAL.]
ROBERT HUIE.	[SEAL.]

Filed Apr. 21, 1873. G. R. Hill, clerk.

The sureties on this bond are good for thirty thousand dollars in Tennessee.

KORTRICHT, CROFT & SCALES, *Att'ys.*

161 And afterwards, to wit, on the 12th of May, 1873, a bond to dissolve injunction was filed in this cause in the words and figures following, to wit:

Know all men by these presents that the Board of Levee Commissioners of Mississippi, District No. 1, and Toof, Phillips & Company, Chas. J. Phillips, John S. Toof, Ralf Wormely & Co., W. H. D. Wendel, and J. R. Murphy & Co., as sureties for said board, are held and firmly bound unto Partee and Stansell, their heirs and assigns, in the sum of forty thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, &c., jointly and severally, firmly by these presents. Witness the signature hereof by said board, by the seal thereof thereto attached by the president and secretary, and the hands and seals of the said sureties, the 10th day of May, A. D. 1873.

The condition of this obligation is such that, whereas the said Partee and Stansell have heretofore filed their bill in equity in the district court of the United States for *for* the northern district of Mississippi, at Oxford, and on the filing thereof, under the fiat of the Hon. R. A. Hill, judge of said court, procured to be issued a temporary injunction, as in said bill prayed for, until the hearing of a motion for said injunction; and whereas, on or about the 8th or 9th day of April, 1873, at chambers, the said motion for injunction came on to be heard, and it was then ordered by said judge that the injunction be granted as in his order then made was prescribed, to continue in force until other-

162 wise ordered, with the proviso in said order made and contained that if the board of levee commissioners aforesaid should make and file in said court their bond, with sureties satisfactory, in the penalty of forty thousand dollars, conditioned as herein, then upon the filing of such bond, the said injunction should stand, and be thenceforth dissolved:

Now, therefore, if the said board of levee commissioners shall successfully defend and resist the said suit of said Partee and Stansell in said district court, or, if failing to successfully defend and resist the same, shall well and truly abide by and perform the judgement and decree which may be pronounced against them in the said cause upon the final hearing of the same, then this obligation to be void; otherwise to remain in full force and effect.

By order of the Board.

[SEAL.]

M. S. ALCORN,
President of Miss. Levee Board, District No. 1.
A. R. HOWE,
Secretary Miss. Levee Board, District No. 1.
TOOF, PHILLIPS & CO.
CHAS. J. PHILLIPS. [SEAL.]
JNO. S TOOF. [SEAL.]
RALF WORMELLY & CO.
W. H. D. WENDEL. [SEAL.]
J. R. MURPHY & CO.

Filed May 12th, 1873. G. R. Hill, clerk.

163 Afterwards, to wit, on May 15th, 1873, replication was filed in this cause in words and figures following, to wit:

U. S. of AMERICA,
Northern Dist. of Miss:

In the district court for the said district.

PARTEE & STANSELL
vs.
LEVEE BOARD OF MISS. AND OTHERS.

The replication of the complainants, Partee and Stansell, to the answer of the Levee Board of Miss., District No. 1, and others, defendants.

These repliants, saving and reserving all advantage of exception to the said answer, for replication thereunto, say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law, and that the said answer is very uncertain, evasive, and insufficient in the law to be applied unto; without this, that any matter or thing in the said answer contained material or effectual in law to be answered unto, and not hereby well and sufficiently hereby replied unto, confessed or avoided, or traversed or denied, is true; all which matters and things these repliants are ready to aver, ma'ntain, and prove as this honorable court shall direct, and humbly pray as in and by the said bill they have already prayed, &c.

ELLETT & PHELAN,
For Complainants.

Filed May 11th, 1873. G. R. Hill, clerk.

164 Afterwards, to wit, on June 9th, 1873, objections to defendants' bond was filed in the words and figures following, to wit:

District court for the northern district of Mississippi.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1, AND others.

The complainants object to the approval by the court of the bond filed by the defendants on the 12th of May, 1873, apparently for the object of raising the injunction granted in the cause.

1. Because the condition does not contain the following clause required by the order, to wit, "and pay to said complainants any sum that may be awarded or adjudged in their favor against the said defendants, or any of them."

2. Because the sureties are non-residents of the State of Mississippi. The bond is in the nature of a replevin bond, and the decree ought to go against the sureties at the same time as against their principal. At least, the sureties ought to be amenable to the process of the court.

The complainants were allowed, by special order, to make their injunction bond in Tennessee, because they lived in Tennessee, and
165 therefore could not make a bond in Mississippi. On the other hand, the defendants all live in Mississippi. Giving this bond enables the corporation defendant (the Levee Board) to exhaust their last dollar of assets and resources, and our only remedy will be against the sureties. A decree against the Levee Board cannot be of any value,

hence the necessity for a good bond made by parties within the jurisdiction of the court.

3. The signatures of the names of Toof, Phillips & Co., Ralf Wormelly & Co., & J. R. Murphy & Co. as sureties on such a bond do not bind those firms. One partner cannot as such bind the firm by a sealed instrument. Nor can one partner bind the firm as sureties, or by any other contract not within the scope of the partnership. No person is bound by these signatures but the individual who wrote them, and we are not informed which partner did that. Probably nobody is bound by the signatures.

4. We object to commercial firms, however respectable or apparently solvent, as sureties on the bond. Men whose whole property is in trade, and subject to all its vicissitudes and disasters, are not proper persons for sureties, to bear the brunt of a decree to be obtained at the end of a long lawsuit, af'er, perhaps, several years.

It is significant that these levee commissioners are not willing to sign their own bond, to bind themselves individually for their
166 own acts, but seek to interpose mercantile firms in another State to become substantially the defendants in the cause, and to assume, in consideration of the present use of the bonds, the payment of the ultimate decree.

Let these commissioners sign the bond individually, and we are content.

5. The sureties have not *just*ified, and have not been accepted or approved. The bond was filed without notice and its existence only accidentally discovered.

The sureties are unsatisfactory and are not believed to be sufficient.

H. T. ELLETT,
Sol's for Compl'n'ts.

Filed June 9th, 1873. G. R. Hill, clerk.

Afterwards, on the 16th December, 1873, a petition was filed in this cause, in the words and figures following, to wit:

District court for the U. States for the northern district of Mississippi.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS. AND OTHERS.

To the Hon. R. A. Hill, judge of the said court:

167 The petition of H. A. Partee and J. W. Stansell, the above complainants, respectfully shew unto your honor that on the 9th day of April 1873, an injunction was granted by your honor in the foregoing cause, whereby the defendants were enjoined and restrained from issuing to any person other than complainants the bonds of the said levee board to the amount of $75,000, parcel of the sum of one million dollars of bonds, which the said board are authorized by law to issue, and whereby they were further enjoined and required to hold in their hands the said amount of $75,000 of said bonds passed as aforesaid, or to deposit the same in court to await and be subject to the final decree in this cause. But the complainants were required to give bond in the penalty of $30,000 for the payment of such damages and costs as ought as might be awarded against them, and by order the complainants were permitted to give

as sureties on said bond persons residing in the State of Tennessee. And it was provided in said order that if the defendants would enter into bond to complainants in the penal'y of $40,000 with sufficient sureties, conditioned that they would abide by and perform the decree of the court in this cause and pay to the complainants any sum that might be awarded or adjudged in their favor against the said defendants or any of them, then the said injunction should be dissolved.

Petitioners state that the said order was made in the presence of counsel representing said defendants after full argument and with
168 their knowledge. They state that their injunction bond was made and executed, approved by defendant's counsel, and filed within the time limited by said order, and the injunction issued, and that all the foregoing facts were well known to said defendants.

Yet your petitioners allege that the said defendants after full notice and knowledge of the said injunction did willfully and intentionally violate the same; and did, in contempt of the authority and jurisdiction of this court, proceed, in defiance of said injunction, to issue and did issue and pass and pay out to persons other than your petitioners the whole amount of the said one million of dollars of said bonds, including the said amount of $75,000 of said bonds, which they were commanded not to issue, but to retain in their hands to abide the final decree in this court, and that they have thereby placed beyond the reach of petitioners the only fund that could have been available for the satisfaction of the decree which they may recover in this cause.

Your petitioners are informed that the said defendants pretend that before issuing said bonds they complied with the said order of court by executing and filing the bond required of them by said order, and that thereupon said injunction was dissolved; but petitioners show that these pretenses are unfounded. They are informed that on the 12th of May, 1873, the defendant, M. S. Alcorn, presented to the clerk of this court a paper professing to be such bond and that the same was marked
169 filed; but petitioners deny that the said paper is in any respect a compliance with the said order. They deny that it was ever accepted or approved as such, or that said injunction was ever dissolved. They insist that this could only be done by the action of the court approving the bond and ordering the dissolution of the injunction.

This paper never could have been approved by the court, for many reasons, to wit:

1. It was not signed by "the defendants," as required by the order, but by only one of them, the levee board, by its corporate seal, the said board, in its corporate character, being wholly irresponsible, while the other defendants are most of them considered solvent and responsible.

2. It is not conditioned, as required by the order, but omits the most material part of the condition, to wit, "To pay complainants any sum that may be awarded or adjudged in their favor against the defendants, or any of them."

3. The sureties are not sufficient. On the contrary, they are wholly irresponsible, and were so at the time they signed the paper. And the defendants well knew they were so, for before said paper was filed as a bond it was shown by Phillips, one of the obligors, to your petitioner, Partee, who was asked if it would be satisfactory, to which he promptly replied in the negative, but said at the time that he would be sat-
170 isfied if the other defendants would sign it individually. M. S. Alcorn, one of the defendants, on being applied to, as promptly refused to do, and told Sam. Partee that he did not expect that petitioners would be satisfied with or would accept *accept* said bond.

The persons named as sureties were all non-residents of the State of Mississippi, and lived beyond the jurisdiction of this court, and had no property in said State, and therefore ought not and would not have been accepted as sureties, if ever so responsible elsewhere. But none of said sureties were responsible anywhere.

Toof, Phillips & Co., a commercial firm in Memphis, Tennessee, were ut'erly insolvent at the time, had been in notoriously doubtful and embar'assed circumstances for years, and shortly afterwards went or were put into bankruptcy.

Toof and Phillips, whose names are signed individual'y to the paper, to make a greater show of security, were members of the firm of Toof, Phillips & Co., whose partnership name is also signed to it, and their condition is already described.

W. H. D. Wendel is a member of the firm of Ralf Wormely & Co., which is composed of said Wormely & Wendel. Neither the firm nor the individual members possessed any property, so far as petitioners know or believe or can discover, on which an execution could be levied, or any means which could be reached by attachment or garnishment.

171 They are doing a small business as commission merchants, with little, if any, capital, and are in good credit within the sphere of their own business. As sureties on such a bond they are utterly worthless.

J. R. Murphy, the other surety, had a contract to do work on the levee, but was wholly destitute of property and irresponsible. He conducted his business under the name of J. R. Murphy and Co., but if he had any partner he was unknown, and petitioners have never been able to discover him. Said Murphy has since died, leaving no estate whatever.

Petitioners state that if they had recovered a judgement in this court on the 12th of May, 1878, for $40,000 against all the parties to this paper, it is their firm belief that not one cent could ever have been realized upon it by execution or other legal process, in Mississippi or elsewhere. Some small dividend might possibly have been obtained in the bankrupt court out of the assets of Toof, Phillips & Co.; but that is all, and that will all be distributed before this suit can be brought to a conclusion.

Petitioners further state that they are informed that the said defendants pretend that when the said bond was filed the clerk of this court gave them a certificate under the seal of the court that the said bond was accepted and approved and the injunction dissolved.

172 Petitioners do not know how the fact is, but they deny that any such action was ever taken by this court, or that there is anything in the records or files of this court showing that said bond was accepted or approved, or that said injunction was ever dissolved. They charg' that it was competent for the clerk to approve the bond or to dissolve the injunction, and they insist that these are judicial acts, and can only be performed by the court or judge.

In view of the premises petitioners pray that a writ of attachment may be issued to arrest the bodies of the defendants, M. S. Alcorn, John McCann, J. W. Cocke, William W. Howe, and James Robinson, and to bring them before this court to answer for the said contempt, and that they be committed to the custody of the marshal until they shall give a good bond signed by themselves individually, with sufficient sureties as required by original order or until they shall produce and file in this court bonds of the said levee board to the amount of $75,000, parcel of said original issue of $1,000,000 of said bonds, to remain in the court to

abide the final decree in this cause, and that your honor will further punish the said defendants for said contempt and that petitioners may have all other proper relief in the premises, and they will ever pray, &c.

H. T. ELLET,
For Petitioner.

Filed Dec. 16, 1873. G. R. Hill, Clerk.

173 U. S. OF AMERICA,
Dist. of West Tennessee:

Personally appeared before the undersigned, a commissioner, appointed by the circuit court of the United States for the district of West Tennessee, Hiram A. Partee, one of the above petitioners, who, being duly sworn, saith that the facts stated in the foregoing petition are true to the best of his knowledge, information, and belief.

H. A. PARTEE.

Sworn and subscribed this 2d day of Dec., 1873, before me.
[SEAL.] M. B TREZEVANT,
U. S. Commissioner.

Messrs. KORTRECTH, CRAFT and SCALES,
Solicitors of Defendants:

You are hereby notified that on Tuesday, the 16th day of December, 1873, I shall move the Hon. district court of the U. S. for the northern district of Miss. at Oxford, for an attachment against the defendants for contempt in pursuance of the prayer of the foregoing petitioner.

Yours, truly,

H. T. ELLETT,
Sols. for Complainants.

Service of petition and notice acknowledged Dec. 1, 1873.
HENRY CRAFT,
Att'y for Levee Board.

Filed Dec. 16, 1873. G. R. Hill, Clerk.

174 And afterwards, to wit: at the December term of said court, A. D. 1873, a motion was entered in said cause in the words and figures following, to wit:

Motion.

PARTEE & STANSELL,
vs. } 197.
LEVEE BOARD OF MISS. & OTHERS.

The complainants move the court for an attachment against the defendants for contempt committed by violating the injunction on petition filed.

Ellett, for motion; Craft, Lamar & Mayes, contra.

And at the term last aforesaid, a further motion was entered in said cause in words following, to wit:

Motion.

PARTEE & STANSELL,
vs.
LEVEE BOARD OF MISS. ET AL. } 197.

Complainants move the court for an order on defendants to withdraw the $25,000 of bonds deposited in the 1st National Bank of Memphis, and to deliver them over to complainants or to place them in the hands of the clerk of this court for safe keeping.

Ellett for motion; Craft, Lamar & Mayes.

And afterwards, on the 17th day of December, the same being a day of the December term of said court, A. D. 1873, the following
175 order was made in said cause, to wit:

Order.

PARTEE AND STANSELL
v.
THE LEVEE BOARD OF MISS. AND OTHERS. } 197.

On motion of the defendants it is ordered that they have time for twenty-four days from this date to file their answer to the petition of the complainants for an attachment filed in this cause.

And afterwards, on the 18th day of December, the same being a day of the December term of said court, A. D. 1873, the following order was made in said cause, to wit:

Equity order.

PARTEE AND STANSELL
vs.
THE LEVEE BOARD OF MISS. AND OTHERS. } No. 197.

In this cause it is ordered on the motion of the complainants that the said defendants do withdraw from the First National Bank of Memphis the bonds of said levee board to the amount of $25,000 deposited by the complainants in the said bank on or about the 4th day of December, 1872, in pursuance of an agreement ent'red between said complainants and said levee board on the 4th of October, 1872, if the same have not been already withdrawn by said defendants, and that they deposit the said bonds in the hands of the clerk of this court on or before the 10th day of January, 1874, and that the injunction
176 heretofore in this cause be modified to the extent contemplated by this order, but be in all other respects retained until otherwise ordered.

Filed and entered. M. 7, pg. 43. Dec. 18, 1873. G. R. Hill, clerk.

And afterwards, to wit, on Jan. 15, 1874, an answer to petition for attachment was filed in this cause, in words and figures following, to wit:

District court of the United States for the northern district of Mississippi.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1.

To the Hon. R. A. Hill, judge of said court:

The answer of said levee board, composed of M. S. Alcorn, president, and John McCann, William W. Howe, and James Robinson, members thereof, to a petition filed by Partee & Stansell.

An injunction was granted by your honor, as stated in said petition, for the terms of which and the provisions as to the bond by complainants and by said bond, respondents refer to the interlocutory order entered in the cause on the day of April, 1873. Said interlocutory order was made after argument and in the presence of counsel for respondents. Respondent is informed that a bond was filed by
177 complainants in professed compliance with said interlocutory order. Whether the same was approved by respondent's counsel or by any one, or whether the same was and is in compliance with said interlocutory order respondent is not informed, and cannot state. Respondent has no access now to the records of the court, and no copy of the papers filed in this cause, and can only refer to the said bond so filed by complainants to ascertain its character and sufficiency. Respondent claims that it had the same right to give sureties non-resident that complainants had, and insist that if the non-residence of the sureties or any of them upon the bond filed by respondent can avail as an objection thereto the same objection will be against the bond filed by complainants. This respondent claims and relies upon the benefit of all matter of defense to the present motion, by way of estoppel or otherwise, which may properly grow out of the character of the bond filed by complainants, the nature of the security, the mode of approval and filing, &c.

Respondent positively and unequivocally denies the allegations made in said petition that after full notice and knowledge of said injunction it did willfully and intentionally violate the same, and did in contempt of the authority and jurisdiction of this court, proceed, in defiance of said injunction, to issue the bonds of said levee board, which it was commanded not to issue. Respondent admits that in the manner and under the circumstances hereinafter stated, it did issue and pay out the bonds of said board to an extent which left remaining
178 of the one million of such bonds authorized to be issued and now leaves remaining in the hands of said board less than the sum of $75,000 of said bonds, but respondent now here fully disclaims any contempt of the court, or defiance of its authority or intention to violate its injunction and respectfully declares that its action in the premises has been with the utmost good faith, respect, and deference to this court, and desire to yield in all things an implicit obedience to its command and injunction. And respondents now here state that its president, M. S. Alcorne, as was his duty, acting for the board with full authority so to do, by virtue of his position, filed the bond which was filed without the knowledge or coöperation of the other members of the board. That said other members did not know, until informed afterwards, what was done; and that the following statement of the action of the board

through its said president is made by and upon information derived from the said M. S. Alcorn, president.

It was never the intention of the members of said board to become individual'y bound upon said bond. Their connexion with the matter, and with the law suit, was and is solely in an official and corporate character; and as individuals they had or have interest or concern, except such as appertains to other citizens similarly situated. In the capacity of a corporation, respondent has made contracts with various parties for levee work, to be paid in the bonds of the board, among them with complainants; a full settlement for all work done by them had been made with complainants, and the receipt in full of com-
179 plainants for all bonds due them was held by this board. The rights of other contractors arising after this settlement were pressed upon the consideration of the board, and are, as respondent submits, respectfully, worthy the consideration of this court. It was felt to be the duty of this board to protect such rights, as far as could be done, against injury resulting from the proceedings of complainants in this cause. This board did not propose nor feel bound, in its corporate character, to furnish or procure sureties upon the bond required to dissolve the injunction and probably would not have been able to do so; and as before stated, the members of this board, individuals, did not propose to become bound upon such a bond. It remained, however, for the board, as such, to offer such a bond as those most interested in the dissolution of the injunction might be able to furnish, and to unite officia'y with sureties so furnished in making such bond. With this view and purpose the said M. S. Alcorn, president of the board, did join officially in executing, on the part of the board, and did tender the *the* bond now on file. He went to Oxford with the bond which had been written out by one of the attorneys of the board, and, under the advice and direction of another of its attorneys, tender' the bond to the clerk of this court. The attorneys of complainants resided in Memphis—Mes'rs. Ellett and Phelan. Before leaving Memphis one of the attorneys for the board in Memphis called at the office of Mes'rs. Ellet and Phelan to counsel them about the bond. Mr. Phelan, who
180 was there, stated that Judge Ellett was absent, and that he, Phelan, knew nothing of the case and could do nothing in it; arrived at Oxford, the said Alcorn found that Judge Hill was absent at Jackson. The attorney of the board at Oxford examined the order made by the court allowing the bond to be given and consulted the clerk of the court, who said that it was his duty to receive and approve the bond; and therefore, believing that his action was in strict compliance with said order, the said Alcorn delivered said bond to said clerk, and received from said clerk the receipt under his hand and official seal, of which a true copy is filed herewith marked Exhibit 1, as part of this answer. The original will be produced when required. When said bond had been thus received and filed the said Alcorn was advised by said clerk, and by said attorney, that the in junction was dissolved. He fully believed that the order of the court had been fully and exactly complied with, and that the injunction was dissolved; and then and not until then, bonds were issued and paid out, reducing the amount on hand below the sum of $75,000, and the said M. S. Alcorn as president as aforesaid, here now for himself and for said board, declares that no contempt of the authority of this court, and no violation of its injunction was contemplated; but that on the contrary, to the best of his own knowledge and information, and upon the advice of counsel, and the opinion and authority of said clerk, he felt

181 that he had for said board strictly obeyed the order and decree of this court. Respondent is advised, and now so insists, that the conditions of said bond do strictly comply with the order of this court aforesaid; and that the clerk was the proper person to approve the bond, and receive it; and that the approval and receipt of the clerk did dissolve the injunction. If mistaken as to any of the matters, the mistake was honestly made in good faith, in an attempt to obey, not defy, the authority of this court, and under the advice of counsel and of the officer of this court. The members of the board are advised, and for them the board now insists, that they are not defendants or parties to this suit and could not be, as individuals or otherwise, than in the corporate character of a board, and that the bond required was the bond of the board as such, with sureties, and not the bond of individual members. Respondents upon information derived from said Phillips, positively denies the following allegation contained in said petition. "Before said paper was filed as a bond, it was shown by Phillips, one of the obligors, to your petitioner, Partee, who was asked if it would be satisfactory, to which he promptly replied in the negative." And M. S. Alcorn, president of said board, positively denies the allegation that he "told said Partee that he did not expect petitioners would be sa'sfied with, or would accept said bond." Respondent is informed and believes that said Phillips says that he went with the bond to said Partee before it was signed and told him who would sign it
182 as sureties, and that Partee made no objection whatever to the sufficiency of the sureties, but said that he would leave the matter entirely to Judge Ellett. The said M. S. Alcorn says that he conversed with said Partee about the bond, and that Partee made no objection to the sureties proposed, but said he would see Judge Ellett. That he did add that the individual members of the board, as individuals, would be satisfactory sureties, and in reply to that suggestion the said M. S. Alcorn may have stated to him that said members did not propose to become bound as individuals at all.

Respondents says that said Partee knew what bond would be offered and when it would be offered and *n*ie*t*her, so far as is known to respondent, at the time when it was offered nor before, objected to the sufficiency of the sureties; as already stated, the matter was transacted wholly by the president of the board. He denies that he knew the bond to be insufficient. On the contrary, he says that he considered Toof, Phillips and Co. alone as good security, and was informed when the bond was made by F. S. Davis, president of First National Bank, that Toof, Phillips and Co. were good for the amount of the bond.

He denies that they were entirely insolvent within his knowledge, when they signed the bond, or had been in dou'tful or embarrassed circumstances for years. He now believes that at the time of signing the bond, they were engaged in a large business, and had not gone to protest upon any of their commercial paper. He knew nothing
183 of *of* the pecuniary condition of Ralf Wormely and Co.—supposed them to be commission merchants in good standing, whose names gave additional strength to the bond. J. R. Murphy, the other surety, is now dead. Upon the best information respondent can get, it denies that said Murphy had no property and left no estate. On the contrary, its information, believed to be reliable, is that said Murphy had a farm, and was worth, and had left an estate which is worth from ten to twenty thousand dollars. He believed the bond to be good, and that it was duty to those interested to offer it. If it had been refused, he would have felt that the duty of the bo*n*d in the premises had been dis-

charged. When it was accepted he believed and felt that it was all right as to the court and all the parties concerned. There was no concealment or secresy in the matter, and he thought that his whole action had been strictly legal and proper.

Respondent does not know and cannot now say what a judgment against all the parties upon said bond on the 12th day of May, 1873, for $40,000, would have been worth, but it believes and charges that if such a judgement would have constituted a lien, as no doubt it would have done, upon the assets and property of the sureties, it would have been abundantly good. It is probably true that said sureties had good assets even in Mississippi, far exceeding the penalty of the bond, and beyond all question a lien which would have given preference
184 upon the assits of the sureties in Tennessee, would have been good for the amount as respondent believes. It is informed and believe that Ralf Wormely & Co. now have due them and had then, a very large amount of good debts in Mississippi.

Respondent submits, upon advice of counsel, and by way of demurrer to said petition, that upon the showing made in the petition itself, no ground is laid for the process of attachment and contempt proceedings sought by the petition. But respondent again declares, and M. S. Alcorn, president of the board, for himself, declares that there was no sort of intention or design or purpose to disregard or violate the injunction of this court. Respondent insists that the injunction was, by what took place as aforesaid, dissolved; and finally, respondent states that, acting in good faith and in the confident belief that the injunction was dissolved, the bonds authorized by the levee law to be issued have been issued, and that if issued under a mistaken belief they are worthless now, beyond the control of the board. And they submit that in all that has been done, as aforesaid, the president of the *of the* board has been the active agent; and that there can be no ground for asserting any individual responsibility for official action had in an honest and full belief that it was the proper discharge of official duty.

And now, having fully answered said petition, and shown good cause as it believes against same, respondent prays that it be hence
185 dismissed; & witness the hand of M. S. Alcorn, president of Mis. Levee Board District No. 1, and the seal of said board affixed by his direction, and the signature of the secretary and treasurer, having charge thereof.

[SEAL.] M. S. ALCORN, *Pres't.*

M. J. MANNING,
Secretary & Treasurer.

STATE OF MISSISSIPPI,
Tunica County:

Before me, C. W. Dunaway, clerk of the chancery and circuit courts of Tunica County, Mississippi, and ex-officio notary public in and for said county, this day personally appeared M. S. Alcorn, president of the Levee Board of Miss., District No. 1, and made oath in due form of law that the statements made in the foregoing answer are true to the best of his knowledge and belief. And affiant further says that as such president he called a special meeting of the said board, to meet at Austin, Miss., on Monday, January 5th, 1874, and is here accordingly, but that a quorum of said board fails to be present, John McCann being the only other member present. And before me, at same time and place, appeared John McCann, a member of said levee board,

who made oath, in due form of law, that as stated in the foregoing answer he had no personal agency in or knowledge of the giving of the bond in the Federal court at Oxford, and that he supposed said
186 bond was in all respects sufficient and legal, and that the injunction had been, by the giving thereof, regularly dissolved, and that upon the information given him by the president of the board, he believes the statements of the foregoing answer to be true; and that he has not individually, or as a member of said board, knowingly violated the injunction in question.

M. S. ALCORN.
JOHN McCANN.

Sworn to and subscribed before me by said affiants at office in Austin, Miss., this 6 January, 1874.

[SEAL.] C. W. DUNAWAY,
Clerk of the Chancery and Circuit Courts of Tunica County, Miss., and ex-officio Notary Public in and for said County.

STATE OF MISSISSIPPI,
Panola County:

Before me, C. H. Gleason, clerk of the circuit court of Panola County, Miss., and ex-officio notary public for said county and State, this day personally appeared William W. Howe, a member of the Levee Board of Miss., District No. 1, and made oath in due form of law that, as stated in the foregoing answer, he had no personal agency in, or knowledge of, the giving of the bond in the Federal court at Oxford; that he supposed that said bond was in all respects sufficient and legal, and
187 that the injunction had been, by the giving thereof, regularly dissolved; and that upon the information derived from the president of the board, he believes the statement of the foregoing answer to be true, and that he has not individually, nor as a member of said board, violated the injunction in question.

W. W. HOWE.

Sworn to and subscribed before me at my office in Sardis, Miss., the 12th day of January, 1874.

[SEAL.] C. H. GLEASON,
Circuit Clerk and ex-officio Notary Public, Panola County, Mississippi.

EXHIBIT No. 1.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that M. R. Alcorn, president of the Levee Board of Mississippi, District No. 1, has this day filed in my office a bond for forty thousand dollars, with good and sufficient security required by interlocutory decree of April 9th, 1873, in case of Partee and Stansell vs. said levee board, to be filed therein, in order to the dissolution of the injunction ordered in said decree, and that said bond has been approved by me.
188 Given under my hand and the seal of said court at Oxford the 12th day of May, A. D. 1873.

G. R. HILL, *Clerk.*

Filed January 15, 1874. C. R. Hill, clerk.

And afterwards, to wit, on the 8th day of July, 1874, the following order was made in this cause, to wit:

Order.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT No. 1, and others. } 197.

In this case, on motion of the counsel of complainants, it is ordered by the court, on this 8th day of July, 1874, that the clerk of this court do deliver to the solicitors of said complainants the bonds of the said levee board, which are now on deposit in the hands of said clerk, to the amount of twenty-five thousand dollars, which bonds were deposited in the hands of said clerk under the order of this court by the said levee board.

Filed and entered on M. 7, p'g. 152. July 8, 1874. G. R. Hill, clerk.

189 On the same day and date, to wit, July 8th, 1874, the following receipt was filed in this cause, to wit:

Receipt of clerk.

Received, Oxford, Miss., July 8th, 1874, of G. R. Hill, clerk of U. S. district court, northern district of Mississippi, fifty bonds of the Levee Commissioners District No. 1, State of Mississippi, denominated five hundred dollars each, said bonds having been deposited with said clerk by order of the court in case of Partee and Stansell vs. The Levee Board, &c., and now on motion of complainants allowed to be withdrawn by them.

H. T. ELLETT,
Sol'r of Compl'n'ts.

Filed July 8th, 1874. G. R. Hill, clerk.

And afterwards, to wit, on 24th day of June, A. D. 1875, the following order was made in this cause, to wit:

Order.

PARTEE AND STANSELL
vs.
LEVEE BOARD. } 197.

This day coming on to be heard the motion of defendants for leave to file a cross-bill in the above-entitled cause, and the same being considered by the court, it is ordered that the said cross-bill be filed, subject to any proper objections to be made thereto by the plaintiffs.

190 On the same day and date, to wit, 24th day of June, 1875, a cross-bill was filed in this cause, in words and figures following, to wit:

Cross-bill.

To the Hon. R. A. Hill, judge of the district court of the United States for the district of North. Mississippi, in equity, setting at Oxford, Miss.:

The Levee Board of Mississippi, District No. 1, by leave of the court

first had and obtained, exhibits this as and for its cross-bill in the cause of Partee and Stansell against said levee board now pending on the equity side of said court, and for said cross-bill shows to the court, as follows:

On the 23d day of Feb'nary, 1873, the said Partee and Stansell filed their original bill in said cause, wherein it was, among other things, alleged and charged that they had, under contract made with said levee board, performed certain work in the construction and repairs of levee on the Mississippi River within the said district No. 1, the same being the levees and the district plan'ed by the charter of said board granted by the legislature of Mississippi, under the care, control, and supervision of the said board, and that by the terms of this said contract the said work was to be paid for by the said board in the bonds of said board, issued under the provisions of the said charter; and that in making such payment the said bonds were to be
191 given them at the rate of 90 cents in the dollar. The said original bill also alleged and set out that the bonds of said levee board, to a very large amount, to wit, to the amount of $, had actually been issued and delivered to the said Partee and Stansell in payment for such work, but that under said contract a large amount of said bonds, to wit, the amount of $, was still claimed by said Partee and Stansell to be due to them for said work. To recover the amount so alleged to be due to them, their said bill was filed by said Partee and Stansell.

On the 3d day of April, 1873, the answer of said board to the said bill was filed, admitting a contract between said board and Partee and Stansell, under which certain work on said levees was contracted to be done by said Partee and Stansell, and contracted to be paid for by said board in said bonds. The contract is exhibited with said answer containing the agreement that such bonds were to be paid at the rate of 90 cents in the dollar, with the explanation by said board as to the manner in which the said clause got into the said contract.

Reference is hereby made to the said and answer and to all the proceedings had and proof taken in said cause, as the same now remains on file in this court, No. 197 on the rule docket, as if the same was herein fully set out.

From the said proceedings and contract, and from the testimony taken and filed in said cause, it appears that the contract price for
192 the work to be done by Partee and Stansell, so payable to Partee and Stansell in bonds, was, for one portion thereof, 45 cents per cubic yard, and for another portion thereof 65 cents per cubic yard, with stipulated compensation for clearing, grubbing, &c., and that the said Partee and Stansell sublet and procured to be done by others one-half or more of the said work so contracted for by them, some at 26 cents per cubic yard, some at 25 c'nts per cubic yard, and some at from 18 to 25 cents per cubic yard—none exceeding 26 cents per cubic yard—and the clearing, grubbing, &c., at proportionately lower rates than those contracted for by them with the board. They contracted to pay their subcontractors in cash. This shows that the cash, or money value of the work contracted to be done by Partee and Stansell, did not exceed the rates at which they sublet or procured the same to be done.

The charter of the said levee board, exhibited as Exhibit No. 1, with the said answer of said board, to which reference is here made, provides, in sec. 9, for the issuance of bonds by the said board to the extent of one million of dollars. In and by said section 9, of said charter, it is provided "Said bonds shall be negotiable as promis'ory notes, or bills of

exchange, and may be sold and negotiated in any market in out of the State on the best terms that can be obtained for the same, but in no case shall any of them be negotiated or sold at a greater discount than ten per cent."

It is evidently the proper construction of this charter that the levee work to be done by the levee board, constituted under it, should
193 be paid for in money, and that the bonds to be issued by the board should be sold or negotiated to raise the money with which to pay for the work. The board had no power, therefore, under its charter, to make a contract to pay for such work in the bonds of the board. Such use of the bonds was unauthorized and illegal.

Or if it was within the*ir* power of the board, under the terms of the act, to contract for work payable in bonds, and to use the bonds in payment of such work, then the price to be paid in bonds could not exceed the cash value of the work done and so paid for, more than 10 per cent.

The contract made with Partee and Stansell was a contract to pay in bonds for the work done by them, 45 cents per cubic yard, and 65 cents per cubic yard. When the cash or money value of said work was not exceeding 26 cents per cubic yard, and some of it even as low as 18 cents per cubic yard, this contract was in direct violation, or in attempted evasion of the charter, and was unauthorized, illegal and void, and complainants aver that the said contract to pay for said work in bonds at 90 cents in the dollar*s* as aforesaid was made as a contrivance to evade the provisions aforesaid of that charter of the levee board, and upon the understanding and agreement that the contract so made would evade the said provisions. The said levee board claims in its said answer that it has fully paid to said Partee and Stansell on its bonds at 90 cents in the dollar, and at the rates specified in the contract for all work done by them.

194 It now alleges and charges that even if it should appear from their inability to make proof, or any other cause, that this is not so, still the bonds of the board actually paid and delivered to said Partee and Stansell were, at 90 cents in the dollar, far in excess of the cash or money value of the work, *or* procured to be done by them.

The cash or money value of the work contracted for by Partee and Stansell has only been made to appear in the cause very recently by the proof taken, by which is shown the rate at which they sublet the work as hereinbefore stated.

Partee and Stansell well knew the terms and provisions of the charter by which said levee board was incorporated, and the terms upon which and the purposes for which the bonds of said board could be issued.

The said levee board, in consideration of the premises, pray that this may be taken as its cross-bill in this cause, and may be filed as such, and that the said H. A Partee and J. W. Stansell, composing the firm of Partee and Stansell, may be made defendants hereto and required to answer. And that the said contract so made by and between said board and said Partee and Stansell may be declared void, so far as it provides for the payment for said work in bonds of the board at 90 cents in the dollar, or if mistaken in this, an account be stated showing how many and what amount of said bonds have been received by said Partee and Stansell for said work, and the value
195 of the same at 90 cents in the dollar, and showing the cash or money value of all of the work done or procured to be done under said contract by Partee and Stansell. And that in the final hearing of the cause said Portee and Stansell be required to account for all of the bonds of said board received by them from said board in payment for

work or caused to be done by them at not less than 90 cents on the dollar, crediting them by the cash or money value of such work.

Or for such other or further, or general relief, as said board may be entitled.

CRAFT,
LAMAR AND MAYS,
CHALMERS,
For Levee Board.

Filed June 24, 1875. G. R. Hill, clerk.

And afterward, to wit, on the 30th of June, 1875, the following demurrer to cross-bill was filed in this cause, to wit:

U. S. district court. In equity.

PARTEE AND STANSELL,
vs.
MISS. LEVEE BOARD ET AL. } Cross-bill.

The demurrer of Partee and Stansell, defendants to the cross-bill
196 exhibited against them by the Levee Board of Miss., Dist. No. 1.

These defendants demur in law to the said cross-bill, and say there is nothing therein contained sufficient to maintain the same as a cross-bill. That the matters thereof appear on the face of the bill and exhibits, and can be fully taken advantage of at the hearing without said cross-bill, and that the same shews no defense against the original bill. Wherefore they pray judgment, if they are bound to answer the same.

H. T. ELLETT,
Soli's of Partee and Stansell.

The undersigned counsel of Partee and certifies that in his opinion the above demurrer is well taken in point of law, and he states that the same is not interposed for delay.

H. T. ELLET.

Filed June 30, 1875. G. R. Hill, clerk.

And afterwards, to wit, on the 1st day of July, 1875, the following order was made in this cause, to wit:

PARTEE AND STANSELL
vs.
MISS. LEVEE BOARD. } 197.

This day was heard the demurrer of complainants to the cross-bill filed by defendants, and the court being now advised as to the matters of law arising upon said demurrer orders that it be sustained,
197 and the said cross-bill be dismissed, and upon application of defendants it is further ordered by the court that defendants have leave within ninety days, as of this time, to file an amended answer setting up the matters in said cross-bill, well alleged, the court being of the opinion that the same are matters appropriate to an answer and available to defendants in that form, and that therefore the cross-bill should not be allowed.

And afterwards, on a day of the June term of this court, the following motion was entered in this cause, to wit:

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1. } 197.

Counsel for the defendants in this cause move the court to dismiss the bill herein, because—

1st. Said Levee Board of District No. one, the defendants herein, has by a legislative enactment of the State of Mississippi been abolished, and is not longer capable of suing or being sued in a court of justice.

And for divers other good causes to be urged on the hearing hereof.

HENRY CRAFT & LAMAR & MAYS,
Soli's for Def'ts.

And afterwards, to wit, on the 2nd day of July, 1877, the following order was made in this, to wit:

198 PARTEE AND STANSELL
vs.
LEVEE BOARD, DIST. NO. 1. } 197.

Came on to be heard the motion entered in this cause to dismiss the bill, and the same being considered by the court it is ordered that said motion be overruled. It is further ordered that the complainants take further steps herein by the next term of *of* this court, or said bill will be dismissed for want of prosecution.

On June 29th, 1875, the deposition of Geo. Arnold was filed in this cause in words and figures following, to wit:

U. S. OF AMERICA,
Northern District of Miss.:

In the district court for said district. In equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1., AND others. } 197.

The deposition of George Arnold, taken by consent, at the office of Estes and Ellett, in Memphis, on the 13 day of May, 1875, on the part of complainants in the above cause.

Interrogatory first. State your name, age, residence, and occupation?

Ans. Name, George Arnold; age, 27; residence, Memphis; occupation, contractor.

199 Interrogatory second. Were you a subcontractor from Partee and Stansell on levees in Mississippi in the year 1871, or 1872, or both? If yea, state where the work was located and the extent of it?

Ans. I was one of the firm of Kinsey and Co., who were subcontractors from Partee and Stansell in the spring of 1872, of a portion of the Flower Lake levee in Tunica County, Mississippi. Our contract was

for the south end of said levee, and embraced 100 stations of 100 feet each, or nearly two miles.

Interrogatory second. Was the work completed by you according to the contract; was it received by the board? If so, state by whom, and under what circumstances.

Ans. It was so completed. A short time before the work was finished Maj. M. S. Alcorn was then at the work, and looking at it. He was then president of the board. He said he would send an engineer as soon as it was done and have it received. Shortly after this the work was finished and W. O. Flynn, the engineer who had originally laid off the work, came and examined it and received it as completed to his satisfaction and according to the contract. Flynn's report was adopted by the chief engineer, Kirkpatrick, who gave me an estimate of the work, amounting to something over *over* 107,000 yards, in which was included nearly 5,000 yards for sinkage in bayous and refilling.

200 I have the original estimate furnished Kinsey and Arnold of that work, which I will produce and attach to this deposition as Exhibit A. We claimed pay for 30 acres of clearing, and Partee and Stansell paid us for 30 acres. I presented this estimate to Alcorn, the president of the board, who said it was all right but he could not endorse his approval on it because that would recognize us as contractors, when in fact we were only subcontractors under Partee and Stansell. He told me to tell Partee and Stansell that it was all right, and that they could settle with us according to the estimate, and the board would allow it in settlement with them. He also promised that he would tell Partee and Stansell so himself. Partee and afterwards refused to settle with them according to Kirkpatrick's estimate. We thereupon sued Partee and Stansell, and the matter was referred to two engineers—R. L. Cobb and Geo. B. Pickett—as arbitrators, who measured the work and reported that Kirkpatrick's estimate was correct, except as to the sinkage, and then Partee and Stansell settled with us according to it, except the sinkage. The arbitrators did not allow for the sinkage because that could not be seen, and we failed to introduce any proof on the subject. We claim that Partee and Stansell still owe us for the sinkage.

Interrogatory third. Did any of levee commissioners or any of the engineers of the board have opportunities to see your work as it

201 progressed, and was and did they or any of them express any opinion as to the work?

Ans. Mr. Flynn, the assistant engineer, made his headquarters principally at our camp during the work and saw the work constantly. Maj. Alcorn, the president, and Kirkpatrick, the chief engineer, frequently passed up and down the work as it progressed, and were often at the camp. John McCann, one of the commissioners and levee inspectors, was at our camp and on the work nearly every day, at least three or four times a week, and noticed the work, and often expressed himself as highly pleased not only with our work, but also with all the Flower Lake work.

Interrogatory fourth. When was the work measured by B. Mickle, and what difference was there between his estimate and those of Kirkpatrick, and of Cobb and Pickett?

Ans. The measurement of Mickle was made about a month after the estimate was furnished us by Kirkpatrick, and some time before that of Cobb and Pickett. Mickle's estimate was about 17,000 yards less than that of Kirkpatrick, and about 12,000 yards less than that of Cobb and

Pickett who omitted the allowance for sinkage, for the reasons heretofore explained.

Interrogatory fifth. Did you ever have a conversation with
202 said B. Mickle on the subject of his measurement? If so, state *at*, and the time and place.

Ans. I had a conversation with said B. Mickle at the Peabody Hotel at Memphis, after the measurement by Cobb and Pickett had been made. It must have been late in the summer or early in the fall of 1872.

Albert Billings, who had been a rodman or chainman for Mickle was present. The conversation related to the difference in the several estimates of the work. Mickle said that when he went down to make the measurement Maj. M. S. Alcorn offered to furnish him the original notes of the work, as laid out at the commencement, but that he declined to take said notes; for if he had done so it was likely that he would have arrived at about the same results as Kirkpatrick did, and then people might say or think that he was in "cahoot" with Kirkpatrick. He also said that he only measured what was in sight at the time.

GEO. ARNOLD.

Subscribed and sworn to before me this 13th day of May, A. D. 1875.

HUNSDEN CARY, [SEAL.]
United States Com'r, Dist. of West Tenn.

We waive examination and formalities, but reserve exceptions on ground of competency or relevancy.

HENRY CRAFT,
Sol'r for Levee Board.

Filed June 29, 1875. G. R. Hill.

203 On the same day and date, to wit, on the 29th day of June, A. D. 1875, another deposition was filed in said cause, in the words and figures following, to wit:

Deposition of H. A. Partee.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1 AND others. } No. 197.

The deposition of H. A. Partee, one of the complainants, taken at the office of Estes and Ellett, on the 12th day of May, 1865, on the part of complainants, by consent of parties.

Interrogatory first. Are you one of the complainants in this suit?

Ans. I am.

Interrogatory second. State what knowledge you have of the work done by Partee and Stansell for the defendants, the levee board, in 1871 and 1872, under their contracts with said Partee and Stansell, and what part you had in conducting the business?

Ans. I had no knowledge of the actual execution of the work, except from reports. I resided in Memphis, and only went down to the work occasionally. My duty was to attend to the financial arrangements. Capt. Stansell, my partner, had the entire superintndaence and man-

agement of the work. I raised the money to carry on the work, received the monthly estimates from the engineer, Kirkpatrick,
204 and attended the meetings of the board, and received the payments made us in the bonds of the board, and attended to negotiating the bonds.

In. 3rd. Interrogatory third. Where were the meetings of the levee board held?

Ans. They were generally held at the Peabody Hotel in Memphis; occasionally they were held at Austin, Miss.

In. 4. Interrogatory fourth. How and by whom were the monthly estimates of work done made to you?

Ans. By or through the chief engineer, who was W. R. Kirkpatrick. He sometimes gave me merely memoranda, returning his estimates to the board, and pleading press of businesss as an excuse for not giving me copies. Sometimes he gave me copies. He always returned the estimates to the board, and I settled with them by the memoranda or copies furnished me by the engineer.

In. 5. Interrogatory fifth. Do you know anything about the work being finished and received by the said engineer, and a final estimate being made by him? If yes, state all your knowledge on the subject.

Ans. All I know on that subject I learned from Mr. Kirkpatrick, the chief engineer. He told me that all the work included in our contract, or undertaken by us, was finished according to our contract to his entire satisfaction, and had all been received and accepted by him, and that he had made his final estimate of the whole work. He made this statements to me at the Peabody Hotel in Memphis, in the morn-
205 ing of the day when a meeting of the board was to be held at that place. I think it was in the early part of April, 1872. I requested and urged him to give me a copy of his said final estimate. He said he had no time to make a copy, but he read out to me from the draft which he had prepared to furnish to the board, the estimates he had made for each part of the work, and I set down on papers the figures as he read them out to me and in his presence. This was done in the room at the hotel in which the board usually held their meetings, before the board met on that day. He stated at the time that the calculation in the Yazoo Pass was not complete, but there were some other allowance' to be made to us, I think, for sinkage.

The following are the figures read out to me by Kirkpatrick and taken down by me at the time, as copied from the memorandum then made, to wit:

Shelby Ridge, cubic yds.	220,171.74
Port Royal " "	44,820.53
Willow Lake " "	190,107.03
Yazoo Pass (calculation not complete)	96,000.00
Gordon Break	51,000.00
Flower Lake, C. C. Wilburn's work	6,343.00
" " Kinsey and Co.'s "	107,000.00
" " Mageorney and Fogarty	93,000.00
" " Kain's work	51,000.00
Between Delta and pass, Kain and Kain	28,000.00
Cubic yards	887,442.30

206 The Willow Lake work was not embraced in our original contract, but was let to E. A. Lindsley, or Taylor, Lindsley and Cage. They were getting along badly, and shortly after they commenced, we

(Partee and Stansell), at the request of the levee board, took the contract off their hands and purchased their outfit, and all the estimates for this work were made out in our favor; the price was 45 cents per yard, payable in the same way our other work was to be paid.

At the meeting of the board, held on the day Kirkpatrick gave me his estimates above stated, the board refused to settle with us, and required that we should go back and enlarge the levees at Yazoo Pass, Gordon's Break, and Flower Lake, which we did, but as the work had already been received by their engineer and we had finished our contract and quit that part of the work, we claim compensation for it as extra work.

H. A. PARTEE.

Subscribed and sworn to before me this 13th day of May, A. D. 1875.

[COMMISSIONER'S SEAL.] HUNSDON CARY,
United States Commissioner, Dist. of West Tennessee.

Filed June 29th, 1875. G. R. Hill, clerk.

207 And on the same day and date, to wit, on the 29th day of June, A. D. 1875, another deposition was filed in said cause, in the words and figures following, to wit:

U. S. OF AMERICA,
Northern Dist. of Miss.:

District court of said district. In equity.

Deposition of L. B. Shelton.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1, AND others. } No. 197.

The deposition of L. B. Shelton, a witness on the part of the complainants in the above cause, taken at the office of Estes and Ellett, in Memphis, on the 15th day of May, 1875.

The said witness, being sworn, testified as follows:

In. 1. Interrogatory first. State your name, age, residence, and occupation.

Ans. Name. L. B. Shelton; age, 34 years; residence, Memphis; cotton warehouseman; # 90 Union street.

In. 2. Interrogatory second. How were you engaged in the fall of 1871, and winter and spring of 1872, at what place, and what were your duties?

Ans. I was employed by Partee and Stansell as time-keeper at the Yazoo Pass levee from October, 1871, to February 29th, 1872. My duty was to keep an accurate account of the time of all the hands employed on that work, and for that purpose I went on the work, whenever hands were employed, four times every day, at regular inter-
208 vals, and called the roll of hands employed, and kept a regular record and account of every day and every quarter of a day each hand worked. After the 19th of February, 1872, I was similarly employed on other parts of their levee work, in said levee district.

Int. 3. Interrogatory third. Give the number of days' work done on

said Yazoo Pass by Partee and Stansell, and state what work is embraced in said statement.

Ans. After the work was done I footed up the whole account, and furnished Partee and Stansell a statement of the results. This statement, dated March 21st, 1872, is now before me, and I make it an exhibit, marked A; and I am able to state accurately the number of days' work done on said works by hands, and also the number of days' works done by teams. The aggregate number of days' works, at the rate of one man per day, at the pass work, was 10,157¼, and the aggregate number of days' works, at the rate of one team of two mules and a wagon and scraper, was 1,522½. They had from 100 to 150 hands, and 15 teams; sometimes more hands.

Int. 4. Interrogatory fourth. What would be an average day's work for a man, and what for a team, at such work?

I used to know, but I cannot now remember.

Int. 5. Interrogatory fifth. Was the force kept under discipline, and did they work well?

Ans. I saw them all every day. They were under perfect discipline, and worked as well as any force I ever saw in my life

209 Int. 6. Interrogatory sixth. What work was embraced the *the* above statement of days' work?

Ans. The work at Yazoo Pass, and at Gordon's Break, and the work done between those two places.

Int. 7. Interrogatory seventh. What was the condition of the work at these places on the 19th of February, 1872?

Ans. It was understood that the work was all completed. We left there on the 19th of Feb., considering the work as finished. I know that we moved the camp from there to another part of the work by order of Kirkpatrick, who considered the work done to his satisfaction.

L. B. SHELTON.

We waive cross-examination and formalities, but reserve all objections to the competency and relevancy. Especially we except to the answer to int. 7, where it is stated that "it was understood that the work was all completed," and "we left there on the 19th of Feb., considering the work as finished," and the last line in reference to Kirkpatrick, who considered the work done to his satisfaction.

HENRY CRAFT,
Sol. for Levee Board.

Sworn to by L. B. Shelton, and subscribed before me this 15th day of May, 1875.

[SEAL OF COMMISSIONER.] HUNSDON CARY,
United States Commissioner, District of West Tennessee.

210 *Exhibit A, to Shelton's deposition.*

No. of days' work, at rate of one man per day, at Yazoo Pass, Mississippi:

773,	October.	1871.
2,198,	November.	
3,147½,	December.	
3,017,	January.	1872.
1,021¾,	February.	

10,157¼ days—1,451 weeks.

This includes all the work time at the "Pass" up to the 19th of February, the time of our leaving.

Lee Camp, M'ch 21st, 1872.

L. B. SHELTON,
Time-keeper for Partee and Stansell.

Time of teams at Yazoo Pass, Miss.:

October,	13	days.
November,	23	"
December,	25	"
January,	25½	"
February,	15	
	101½	
	15 teams.	
	1,515	
	7½	
	1,522½ days to one team.	

L. B. SHELTON,
Time-keeper for Partee and Stansell.

Filed June 29th, 1875. G. R. Hill, clerk.

211 On the same day and date, to wit, the 29th day of June, A. D. 1875, another deposition was filed in said cause, in the words and figures following, to wit:

Deposition of J. W. Stansell.

U. S. OF AMERICA,
Northern Dist. of Miss.:

In the district court of said district. In equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1, AND others.

The deposition of J. W. Stansell, one of the complainants in the above cause, taken, by consent, at the office of Estes and Ellett, in the city of Memphis, on the 22nd day of May, 1875, on the part of complainants:

Int. 1. Interrogatory first. State your name, age, and residence, and whether you are one of the parties to this suit.

Ans. My name is Jeptha W. Stansell; age, thirty-seven years; residence, Helena, Arkansas. I am one of the complainants in this suit.

Int. 2. Interrogatory second. Are you one of the firm of Partee and Stansell, who were contractors with the Levee Board of Miss., District One, for building levees in Tunica and Coahoma counties in 1871 and 1872; if so, can you attach to your answer a copy of the bid

212 made by Partee and Stansell for said work?

Ans. I am one of said parties, and I attach hereto a copy of the bid made by us for said work, marked Exhibit A, which bid was accepted by said board, and a contract entered into accordingly.

Int. 3. Interrogatory third. Were the words "at the rate of 90 cts. on the dollar" contained in the con'ract as originally drawn, or how and when were they inserted?

Ans. Our bid was accepted as it stood with those words in it, but they were omitted in the draft of the contract, which was signed by us, with the understanding on both sides that we were to have the bonds at that rate. The words were afterwards inserted by order of the board.

Int. 4. Interrogatory fourth. The contract dated the 28th day of September, 1871, describes the work as work required on Flower Lake levee, in Tunica County, Mississippi; also the pass on the Yazoo Pass, in Coahoma County, Mississippi; also the Shelby Ridge and Port Royal levees, in Coahoma County, Mississippi. Describe the location of each of these levees, and what they embraced.

Ans. Flower Lake levee, in Tunica, was in the neighborhood of four miles long, the surface was nearly level, but it crossed several bayous. The whole was new levee, built back of the old levee, about half of it was through the woods, and the rest through cleared
213 land. The levee was from 6 to 12 feet high, and in the bayous the fill, in two places, was about twenty-five feet. We were allowed by the chief engineer five thousand yards for sinkage and lost dirt put in the bayous. The pass on Yazoo Pass levee embraced the opening at the Yazoo Pass proper, and the repairs between that and what was known as Gordon's Break, about three-fourths of a mile south of the pass, which was a bad crevasse in the levee, about five hundred feet across, and washed out from ten to twenty feet below the surface of the ground. It also included the levee from Gordon's Break to Delta, a distance of about three and a half miles, in which there was one break of about four hundred feet across, and about twenty-two feet deep. We were directed by the chief engineer to do all this work as belonging to the pass levee, and embraced in our contract under that designation. The filling of Gordon's Break, and the other break mentioned, was the same class of work as the Yazoo Pass proper, and worth about the same. The rest of the work from the pass to Delta, was repairs to old levees, and was more expensive to perform than the filling of the pass and the breaks mentioned. The Shelby Ridge or Delta levee was a new levee, commencing about a quarter of a mile above Delta, and running
214 back of Delta about three miles and a half to join the old levee about a mile or a mile and a half above Friar's Point. The Port Royal levee was a big crevasse about three miles below Friar's Point, about half a mile long. It was all heavy work, being from ten to fourteen feet high. What is called the Delta levee in the contract is a part of the Shelby Ridge levee, being that part lying immediately back of Delta, where the ground was very low and overflowed easily, and it was thought important to have that part finished before the other part, which was on comparatively high ground, with the exception of two bayous, which the engineer ordered me to fill.

Int. 5. Interrogatory fifth. Was the work done in the time required by the contract; and, if not, why not?

Ans. The work was not done the time required by the contract. The time was extended from time to time by the board. The original understanding was that the work was to be done so as to protect the country from overflow, and we threw our force at the points which we

were directed to finish first, and we did finish all the work so as completely to protect the country from overflow. No objection was ever made by the board to the time the work was finished, that being done to the satisfaction of all parties. Regular monthly estimates of our own work, and that of our subcontractors, were made by the board's engineers for March, 1872, and the work was received after the expiration of the time specified in the contract.

Int. 6. Interrogatory sixth. State what levee is meant by the designation of Willow Lake, and how you came to be connected with it, and all your knowledge concerning it.

Ans. Willow Lake levee is nearly opposite Helena, and runs back of Dowd's Landing. It was all new levee, running from the old levee, a little above Helena, a distance of three and a half to four miles, till it connects again with the old levee, about a mile above the Yazoo Pass. The contract was originally let by the board, in September, 1871, to E. A. Lindsley, or Taylor, Lindsley and Cage. They did not get along to the satisfaction of the board, and they proposed to us to take it off their hands, which the board urged us to do. For these reasons, and also to protect ourselves, we took the contract off their hands, and done the work ourselves. Lindsley was to have forty-five cents a yard, payable in bonds of the board at 90 cents in the dollar. I was present in September, 1871, when the contract was made, and know that such was the understanding. We took the contract in January, 1872. Lindsley had done some of the work, and received some of the pay in bonds. The bonds were turned over to us, and we refunded to him in money all that he had expended, and took his outfit off his hands at a valuation. The monthly estimates after that were made out in favor of Partee and Stansell, who were recognized as the contractors.

Int. 7. Interrogatory seventh. Was any of the work done by you, or by your subcontractors, accepted or received by the chief engineer of the board, as completed to his satisfaction according to your contract; if so, state what parts of said work were so received and accepted.

Ans. The Willow Lake work was so accepted and received, so also was the Yazoo Pass work and the Gordon Break work. The Flower Lake work was all accepted and received by said engineer, except the work done by Kain and Kain, which was not finished at the time Kirkpatrick ceased to be chief engineer, and that was afterwards received by J. A. Hood, the engineer in charge, and approved in writing by M. S. Alcorn, the president of the board. Mike Kain or Cain was the one of the Kain's in charge of the work as subcontractor. The repairs on the old levee, between the pass and Gordon's Break, the repairs between Gordon's Break and Delta, done by Kain and Kain, including one break, the Shelby Ridge or Delta levee, the Port Royal work, indeed all the work we contracted to do, with the single exception above stated, was accepted and received by said chief engineer. The Shelby Ridge levee was also received by M. S. Alcorn, the president of the board. He was there just as I was finishing and I told him I was done, and if there was anything not to his satisfaction I would like to know it then. He took me to one spot and pointed it out as requiring some more dirt, and I immediately put the hands there, and finished it to his satisfaction, and he then said it was all satisfactory, and he would give me a written statement to that effect. Alcorn also received the Yazoo Pass work as finished to his entire satisfaction, and afterwards required me to go back and put more dirt on it at points designated by him on the inside of the em-

bankment, which we did to his entire satisfaction. McCann, the levee inspector, also received the Yazoo Pass work as done to his satisfaction, and also all the rest of work, except Kain and Kain, at Flower Lake. Both Alcorn and McCann, as well as the chief engineer, well knew that vegatable matter was used in the foundation of the work at Yazoo Pass and Gordon's Break, and I have heard McCann express his approbation of it.

Int. 8. Interrogatory eighth. Who was the chief engineer of the levee board during the time you were engaged on the work in question? Do you know where he is? Have you made efforts to find him for the purpose of taking his deposition in this case? What has been the result of your inquiries?

Ans. W. R. Kirkpatrick was the chief engineer of the levee
218 board during the period in question. I do not know where he is. Ever since this suit was commenced I have made the most diligent inquiry to find him, for the purpose of taking his deposition. I have made inquiry at every place where I could hear that might possibly be found, and have not been able to find him. The last information that I got that I considered reliable was that he was in Valparaiso, South America. I heard lately that he was in Galveston, Texas, but on inquiry there I have not been able to get any trace of him.

Int. 9. Interrogatory ninth. Was the work done on the levees by or under Partee and Stansell done under the immediate direction and superintendance of any person acting in the behalf of the levee board? If so, whom?

Ans. All the work was done under the immediate direction and superintendance of said Kirkpatrick, the chief engineer. He was constantly on the work, overlooking and directing it. Everything was done according to his directions, and he saw all the work as it progressed, and knew perfectly how all of it was done. The president of the board and Mr. McCann, the inspector, were also frequently on and over the work, and saw how everything was done, and could have objected. In regard to the Yazoo Pass work, when the contract was first made,
219 I requested the board to appoint a special engineer to superintend that work, who should be there all the time, with power to control the work, and offered to pay all the expense of such engineer. The president replied that they would have an engineer there, and the chief engineer spoke up and said he would be there as often as necessary; that he would make that his headquarters during the work at that place.

Int. 10. Interrogatory tenth. After accepting your work, did the said Kirkpatrick, as engineer, make out a final estimate of the work or any part of it? Did you see such estimate, or how did you obtain a knowledge of it or its contents? Was it returned by him to the levee board, or what became of it?

Ans. Kirkpatrick did make final estimates of the work done by Partee and Stansell. I saw most of them, if not all of them, in his office at Friar's Point. I had them in my hands, and I afterwards saw them in the possession of the levee board at the Peabody Hotel, in Memphis, at a meeting held there about April, 1872. I may have seen some of them before. At the time I saw them at his office at Friar's Point, they were lying on the table. I asked him to give me a memorandum of the amounts. The estimates for the separate parts of the work was on separate paper. He took them up and called off the aggregate amounts, and I set them down as he gave them to me; that is,

220 the round numbers, omitting the fractional parts of 100. The following are the figures taken down by me at the time, to wit:

Flower Lake work, embankment and muck ditch, sq. yards	261,500
Willow Lake, sq. y'ds	190,000
Yazoo Pass, " "	96,000
Repairs on old levee between pass and Gordon's Break	15,000
Gordon's Break work	51,000
Work of Kain and Kain, subcontractors, between Gordon's Break and Delta	35,000
Shelby Ridge	220,000
Port Royal	44,800

We were afterwards required to go back on the work between the pass and Gordon's Break and do a large amount of additional work, after the work had been done according to the contract, and had been accepted as satisfactory by the said engineer. I think the additional work done by us, after being sent back as aforesaid, amounted to about 5,000 yards, for which no estimate was ever made. We worked there about (15) fifteen hands and (5) five teams for twelve or fifteen days.

Int. 11. Interrogatory eleventh. Did the above estimate include anything for grubbing and clearing; if not, state how much clearing and grubbing was done on the whole work, and how you arrive at it.

Ans. The estimates mentioned did not include any allowance
221 for clearing or grubbing. A large part of the levee ran through thick, heavy timber, which had to be cleared to the necessary width for the levee, and to include space for the borrow-pits from which dirt was taken to build the levee. We also had to cut down all timber within its length of the levee that leaned towards it, or threatened, if it fell, to fall upon it. Mr. Flynn, the engineer of the board, made an estimate from his original notes of the laying out of the work, of the number of acres cleared and grubbed by us, and gave it to me at the time in his own handwriting. The amounts are as follows:

Flower Lake, acres of clearing	66.3
Willow Lake, " " "	25.0
Yazoo Pass, " " "	13.7
Repairs between Yazoo Pass and Delta, " " "	14.0
Shelby Ridge, " " "	71.0
Port Royal " " "	10.0
Total acres	200.

Which estimate I believe to be correct.

Int. 12. Interrogatory twelfth. Did said estimates include any allowance for sinkage; if not, what allowance should be made for sinkage?

Ans. The said estimates included no allowance for sinkage. The places where an allowance should be made for sinkage were Flower Lake, Willow Lake, and Shelby Ridge, at which places there were a number of large bayous, and at Yazoo Pass. I inquired of Mr.
222 Kirkpatrick what allowance ought to be made us for sinkage at those points, and he informed me that he would allow and estimate for the sinkage as follows, to wit:

bankment, which we did to his entire satisfaction. McCann, the levee inspector, also received the Yazoo Pass work as done to his satisfaction, and also all the rest of work, except Kain and Kain, at Flower Lake. Both Alcorn and McCann, as well as the chief engineer, well knew that vegatable matter was used in the foundation of the work at Yazoo Pass and Gordon's Break, and I have heard McCann express his approbation of it.

Int. 8. Interrogatory eighth. Who was the chief engineer of the levee board during the time you were engaged on the work in question? Do you know where he is? Have you made efforts to find him for the purpose of taking his deposition in this case? What has been the result of your inquiries?

Ans. W. R. Kirkpatrick was the chief engineer of the levee
218 board during the period in question. I do not know where he is. Ever since this suit was commenced I have made the most diligent inquiry to find him, for the purpose of taking his deposition. I have made inquiry at every place where I could hear that might possibly be found, and have not been able to find him. The last information that I got that I considered reliable was that he was in Valparaiso, South America. I heard lately that he was in Galveston, Texas, but on inquiry there I have not been able to get any trace of him.

Int. 9. Interrogatory ninth. Was the work done on the levees by or under Partee and Stansell done under the immediate direction and superintendance of any person acting in the behalf of the levee board? If so, whom?

Ans. All the work was done under the immediate direction and superintendance of said Kirkpatrick, the chief engineer. He was constantly on the work, overlooking and directing it. Everything was done according to his directions, and he saw all the work as it progressed, and knew perfectly how all of it was done. The president of the board and Mr. McCann, the inspector, were also frequently on and over the work, and saw how everything was done, and could have objected. In regard to the Yazoo Pass work, when the contract was first made,
219 I requested the board to appoint a special engineer to superintend that work, who should be there all the time, with power to control the work, and offered to pay all the expense of such engineer. The president replied that they would have an engineer there, and the chief engineer spoke up and said he would be there as often as necessary; that he would make that his headquarters during the work at that place.

Int. 10. Interrogatory tenth. After accepting your work, did the said Kirkpatrick, as engineer, make out a final estimate of the work or any part of it? Did you see such estimate, or how did you obtain a knowledge of it or its contents? Was it returned by him to the levee board, or what became of it?

Ans. Kirkpatrick did make final estimates of the work done by Partee and Stansell. I saw most of them, if not all of them, in his office at Friar's Point. I had them in my hands, and I afterwards saw them in the possession of the levee board at the Peabody Hotel, in Memphis, at a meeting held there about April, 1872. I may have seen some of them before. At the time I saw them at his office at Friar's Point, they were lying on the table. I asked him to give me a memorandum of the amounts. The estimates for the separate parts of the work was on separate paper. He took them up and called off the aggregate amounts, and I set them down as he gave them to me; that is,

220 the round numbers, omitting the fractional parts of 100. The following are the figures taken down by me at the time, to wit:

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Work of Kain and Kain, subcontractors, between Gordon's Break and Delta	35,000
Shelby Ridge	220,000
Port Royal	44,800

We were afterwards required to go back on the work between the pass and Gordon's Break and do a large amount of additional work, after the work had been done according to the contract, and had been accepted as satisfactory by the said engineer. I think the additional work done by us, after being sent back as aforesaid, amounted to about 5,000 yards, for which no estimate was ever made. We worked there about (15) fifteen hands and (5) five teams for twelve or fifteen days.

Int. 11. Interrogatory eleventh. Did the above estimate include anything for grubbing and clearing; if not, state how much clearing and grubbing was done on the whole work, and how you arrive at it.

Ans. The estimates mentioned did not include any allowance
221 for clearing or grubbing. A large part of the levee ran through thick, heavy timber, which had to be cleared to the necessary width for the levee, and to include space for the borrow-pits from which dirt was taken to build the levee. We also had to cut down all timber within its length of the levee that leaned towards it, or threatened, if it fell, to fall upon it. Mr. Flynn, the engineer of the board, made an estimate from his original notes of the laying out of the work, of the number of acres cleared and grubbed by us, and gave it to me at the time in his own handwriting. The amounts are as follows:

Flower Lake, acres of clearing	66.3
Willow Lake, " " "	25.0
Yazoo Pass, " " "	13.7
Repairs between Yazoo Pass and Delta, " " "	14.0
Shelby Ridge, " " "	71.0
Port Royal " " "	10.0
Total acres	200.

Which estimate I believe to be correct.

Int. 12. Interrogatory twelfth. Did said estimates include any allowance for sinkage; if not, what allowance should be made for sinkage?

Ans. The said estimates included no allowance for sinkage. The places where an allowance should be made for sinkage were Flower Lake, Willow Lake, and Shelby Ridge, at which places there were a number of large bayous, and at Yazoo Pass. I inquired of Mr.
222 Kirkpatrick what allowance ought to be made us for sinkage at those points, and he informed me that he would allow and estimate for the sinkage as follows, to wit:

Flower Lake	5,000	y'ds.
Willow Lake	11,000	"
Shelby Ridge	5,000	"
Yazoo Pass	20,000	"
Making in all	41,000	"

Sinkage is a thing not capable of accurate measurement, and can only be determined by an engineer of experience, who is on the work watching its progress and observing the settling of the bank from time to time. This was Kirkpatrick's duty, and he performed it and gave me the result.

Int. 13. Interrogatory thirteenth. Did Partee and Stansell settle with their employees and contractors according to the estimates furnished by Kirkpatrick?

Ans. We had a great deal of the work done by hands who worked in squads, and took from one to five stations of one hundred feet, and we had large subcontractors who took considerable amounts of the work. All these were paid in money according to the monthly estimates furnished them by the engineer. They brought the estimates to us, and we always paid them by the estimates, reserving a small percentage for our security, and when they finished a job and
223 brought the engineer's certificates that it was completed, with his estimate of the amount of work, we paid them up in full as far as we were able. When the work was finished we were indebted to all subcontractors except one, and we greatly needed what was due us from the board to enable us to settle with these contractors, and to pay the debts we had incurred in carrying on the work.

Int. 14. Interrogatory fourteenth. Was there any vegatable used in the foundation of these levees? If yes, state where and how such material came to be so used.

Ans. There were sapplings of willow and cottonwood limbs and brush used in the foundations of the levees at Gordon's Break and Yazoo Pass, where the bottom was muddy and boggy. This material was used by the express direction of Dr. Dowd, then the president of the board, and of Kirkpatrick, the chief engineer. I was entirely opposed to using it myself, and only did so because I was expressly directed to do so, and because I was obliged to follow the directions of the engineer. The ground of my opposition was not that the work would not be as good or as durable, but because with the kind of hands I had, who were principally Irishmen, not used to handling axes, and only skillful in handling dirt, it was really less expensive to me
224 to put in the dirt than to put in the poles and saplings. These directions were given to me at the Peabody Hotel in Memphis, at the time the contract was entered into. Dr. Dowd and Kirkpatrick were both present and participated in that conversation, though I had several conversations with each of them to the same effect; at the time referred to they both directed me to commence work at the pass and at Gordon's Break immediately, so as to have those points closed before any high water came up, and they directed me in clearing off the ground to put in all the sapplings not too large to be handled, and the limbs, brush, poles, &c., in the bottom of the break and pass, and if I could not get enough at the spot, to bring what was necessary from other places. I remarked to them that I would prefer putting in the dirt, as I could do it cheaper. They said that they had decided to have the vegatable matter put in, as they thought it would make a bet-

ter foundation; while the work was progressing, and while this vegatable matter was being put in, and was visible to every passer-by, the chief engineer and his assistants were passing by every day and saw what was being done. The president of the board (then Maj. Alcorn, who had succeeded Dr. Dowd), and Jno. McCann, who was one of the commissioners appointed by the board as inspector of levees, to inspect and overlook all the work as it progressed, likewise passed fre-
225 quently by the same places, and saw how the work was constructed, and none of them ever made the slightest objection to it.

Int. 15. Interrogatory fifteenth. How has the work at the pass and Gordon's Break, in which this vegatable matter was used, stood, in comparison with the rest of the work and in comparison with other work done by other contractors than Partee and Stansell?

Ans. The work at the pass and at Gordon's Break, in which this material was used, has stood four overflows without injury, and is now sound, safe, and good. All the other work done by Partee and Stansell has also stood, and none of it has given away, or been overflowed. Breaks have occurred in the work done at the same time by other contractors—I think in that of all except Duffin's.

Int. 16. Interrogatory sixteenth. Were Partee and Stansell required by the levee board to go back and do additional work after the work had been accepted as satisfactory by their chief engineer?

Ans. They were repeatedly sent back after the work had been expressly received and approved by the chief engineer and inspector. On some of the work we were sent back as many as three times, after the work had been received each time and our hands and implements taken away. The engineer would come to us and say that it was the
226 order of the president that we should go back on a particular part of the work, and would direct us what to do; and when it was again done and accepted he would come again and say we must go back again. Once or twice on the pass we were sent back by the order of the president after the work had been expressly received by himself as perfectly satisfactory.

Int. 17. Interrogatory seventeenth. Can you state the circumstances under which the receipt of Partee and Stansell, dated 18th June, 1872, was given?

The levee board refused to settle with us according to Kirkpatrick's estimates, and sent B. Mickle, as special engineer, to make an estimate of the work. Mickle returned them an estimate considerably lower than that of Kirkpatrick; and though Mickle's estimate shewed the board to be indebted to us in the amount specified in said receipt, the board refused to pay any part of what they admitted to be due us unless we would sign a receipt in full of all demands to date. The creditors of Partee and Stansell were then clamorous for pay, and were obliged to have what the board offered to pay; and in order to get it we were compelled to sign that receipt; but it was done under express protest on our part that we would not acquiesce in it as a final settlement; that we signed it under compulsion, and would demand all our legal rights.
227 We, in fact, did not acquiesce in it, but pressed our claims before the board, and to the individual members of it, until they finally entered in the agreement of October 4th, 1872, by which the whole matter was to be referred to a board of arbitrament, as provided therein.

Int. 18. Interrogatory eighteenth. Did you appoint an engineer on your part under the agreement of October 4th, 1872; who was he; was the agreement ever executed or carried out; and, if not, why not?

Ans. We selected George B Fleece as engineer on our part, and notified our selection to the board. The agreement never was carried out, though we made every effort on our part. The correspondence between said Fleece, R. L. Cobb, B. Mickle, Partee and Stansell, and the levee board, already filed, or hereafter to be filed, in this case, will show why not.

Int. 19. Interrogatory nineteenth. What expenses, if any, did you incur in your efforts to have said agreement carried out?

Ans. We took Mr. Fleece and R. L. Cobb, the third engineer selected by Fleece and Mickle, down to Friar's Point. We provided tents and a camp outfit—bedding, provisions, cooking utensils, &c. Employed hands, seven in number, to clear off the levee so that it could be measured, and to assist the engineers. The hands were in camp eight or ten days. The engineers boarded at Friar's Point. The three engineers worked some days at the measurement, when it was broken up by
228 the withdrawal of Mickle. We (Partee and Stansell), paid the hands $106.62. The outfit cost us about $180; provisions $20. We paid $126 for board of Mickle, Fleece, and Cobb at Friar's Point and Delta, and passage of Fleece and Cobb to and from Friar's Point $16.00. We paid Fleece for his services $400. We also paid Mr. Cobb for his services. I think it was the same as Fleece.

Exhibit A, to the deposition of J. W. Stansell.—Bid of Partee and Stansell for levee work.

MEMPHIS, TENN., *Sept. 27th*, 1871.

To Levee Board, &c., 1st Dist. Mississippi:

GENTS:—We propose to contract for the levee work to be let in your district, on the following terms, &c., to-wit:

For Flower Lake	45c.	per	cubic	yd.
" Yazoo Pass	65c.	"	"	"
" Delta	45c.	"	"	"
" Shelby Ridge	45c.	"	"	"
" Port Royal	45c.	"	"	"

Clearing, $30 per acre. Grubbing, 15$ per acre. Payable in bonds running from Jan'y, 1873, to Jan'y, 1881, at 90 cts. to the dollar, or ten % discount.

Respectfully submitted.

H. A. PARTEE.
J. W. STANSELL.

Copy. Attest:

THOS. A. BURKE.

MEMPHIS, *Feb'y 15th*, 1872.

229 *Exceptions of defendant.*

We except to so much of the answer to int. 4, as states, that "We were directed by the chief engineer to do all this work as belonging to the pass levee, and embraced in our contract under that designation," because it is incompetent; also, to so much of said answer, and of other answers, as gives a valuation to any work embraced in their contract; also, to so much of said deposition as states the understanding of the parties, or any agreement of parties, differing from the contract, or upon

matters covered by the contract; also, to so much of ans. to int. 5, as states any understanding, or any directions, without stating by whom such understanding was had, or by whom such directions were given; also, to so much of ans. to int. 7, as states acceptance and approval of work by M. S. Alcorn, president; also, all such portions of such deposition as states what was said and done by McCann; also, to the ans. to int. 11, and especially what purports to be estimates given by Mr. Flynn; also, to answer to int. 12, in so far as it states what Kirkpatrick said about allowances for sinkage; also, to much of answer to int. 14 as states conversations with or directions by Kirkpatrick or Dowd in reference to the use of poles and brush in the levee; also, to ans. to int. 19th, as to expenses incurred or money paid out by Partee and Stansell in connection with the alleged arbitration, upon these grounds, that all of the deposition embraced by the exceptions, and all parts
230 though not specified, but subject to same exceptions, are incompetent and irrelevant, reserving these exceptions in cross-examination, as follows:

Cross-int. 1. When was the partnership of Partee and Stansell formed; who was the active partner in making contracts with the levee board, or others?

Ans. It was formed in September, 1871; I don't know that there was any special work; we were both together and made the bid.

Cross-int. 2. Who was the superintendant of the work?

Ans. I was.

Cross-int. 3. When did Dr. Dowd cease to be president of the levee board?

Ans. At his death; I don't remember the date; in the fall of 1871—after Partee and Stansell had begun work for the levee board.

Cross-int. 4. Who procured the insertion of the words "at 90 cts. on the dollar" in the contract; when was it inserted; were you present; how do you know it was so understood?

Ans. *Ans.* I don't think I was present when it was done, and do not know of my own knowledge when it was done. When the contract was signed, Dr. Dowd said it was not necessary to insert this provision in the contract, because the laws provides for the use of the bonds at 90 cts. on the dollar; I heard from Mr. Partee, that the board agreed to insert those words afterwards. I think the insertion was made after Dr. Dowd's death.

231 X-int. 5. State in detail what part of the work was done Partee and Stansell, and what part by subcontractors. Give names of subcontractors.

Ans. We did the Shelby Ridge or Delta levee work ourselves, and the Willow Lake work, also Yazoo Pass, Gordon's Break, and the repairs between these two places, and a portion of the work on Flower Lake, let to Kain and Kain as subcontractors, which they failed to complete in time, and we had to finish ourselves; a part of the Shelb Ridge or Delta levee was let out to be done by stations, say from one hundred to five hundred feet to a squad; I suppose fully one-third of the Shelby Ridge or Delta work was thus let out in stations, and about one-quarter of the Willow Lake work was also let out in this way by stations, also several stations of the Flower Lake work after we took charge of it, were let out in the same way; I don't remember how much. The upper end of the Flower Lake work was taken by Fogarty and McGourney, as subcontractors; immediately below them Kain and Kain took a subcontract of about half a mile; the next work below them was let

first to C. C. Wilbourn, who failed to comply with his contract, and was then let to C. S. Kensley and Co. (Kensley and Arnold), who completed the work; then the repairs between Gordon's Break and Delta, about 3½ miles, was let out to Kain and Kain, including a breach
232 or crevasse in the levee about half-way between Gordon's Break and Delta; the Port Royal work was let to a subcontractor named Tom Daly.

X-int. 6. At what prices, per cubic yard, did you sublet the work?

Ans. We sublet the work at 26 cents per cubic yard to all of the subcontractors except Kain and Kain—their contract was twenty-five (25) cents. The station work described was let at from 18 to 25 cents per cubic yard. These prices were to be paid in money.

X-int. 7. Upon what basis did you settle with your subcontractors, as to estimates or measurement. Who made the subcontracts?

Ans. We settled with them upon the statements or informal estimates furnished to them by Kirkpatrick, the chief engineer, of the work done by them. These statements, or informal estimates, I did not uniformly preserve; we made them generally together, but with Daly and with Kain I made the contracts myself; I let out all the station work myself.

X-int. 8. Did Partee and Stansell keep books; if so, where are they?

Ans. I kept books on the work, Mr. Partee kept books in Memphis as to supplies shipped, money furnished, &c. These books are now here, I suppose, in Mr. Partee's office.

X-int. 9. Was the Willow Lake work of a different character from the Gordon Break and Delta and Flower Lake work, or the same sort?

233 Ans. The Willow Lake, Flower Lake, and Shelby Ridge work, was pretty much the same sort of work; the Gordon Break work was much heavier and more expensive in the proper handling of the material.

X-int. 10. How was it necessary for your own protection for you to take the Willow Lake work?

Ans. In order to get the whole line *line* complete to satisfy the people and reconcile them to paying the tax, also to have control of the bonds to be paid for the work, and prevent them from being hawked about.

X-int. 11. Was the contract between Lindsley and the levee board for this work in writing?

Ans. I don't know; I never saw a written contract, that I remember of. When I say, in answer to 6th int., that I was present when their contract was made, I mean I was present when the terms were agreed upon, but not when any writing was signed, so far as I remember.

X-int. 12. Was your contract with the board to do the Willow Lake work in writing?

Ans. I don't think we had any written contract; we simply assumed the contract of Lindsley, or Lindsley, Taylor and Cage.

X-int. 13. How many bonds did Lindsley turn over to you?

Ans. I don't remember; all that he had got up to that time.

X-int. 14. Who made the monthly estimates?

Ans. They were rendered by chief engineer.

X-int. 15. Were all the monthly estimates paid by the board; if not, when did they cease to pay.

234 Ans. No, sir; some time in the early part of 1872, the board stopped paying entirely the monthly estimates. I don't remember the date.

X-int. 16. Have you a statement which you can file showing just what has been paid upon each part of the work, and how much you claim to be still due upon each part?

Ans. I have no such statement now and am not sure that our books would enable us to make it. I will, however, make and furnish hereafter, as part of my testimony, such a statement as nearly as I can.

X-int. 17. Did you examine the estimates made by B. Mickle, as special engineer; if so, can you tell how the' differ from Kirkpatrick's; I mean in general features, not details?

Ans. I examined the amount or aggregate made up by Mickle. He made the number of cubic yards less, and omitted the items of clearing and sinkage, which were in Kirkpatrick's estimates, or perhaps did include some clearing, but not so much as Kirkpatrick did. Mickle made no allowance for filling cavities, which would only be shown by the original notes in laying out the work. The amount of sinkage could only be ascertained by a competent engineer of observation of the work as it was going on, or by reference to the time and labourers upon the work. Kirkpatrick did allow for the sinkage
235 and the filling of the cavities, but in the figures which he gave me as I detail them in my ans. to. int 10. I do not understand sinkage to be included, but filling cavities was. Whether he made any report of sinkage, or allowance for it in his estimates given the board, I cannot say.

X-int. 18. How do you know that the figures given you by Kirkpatrick as detailed in your answer to int. 10, did not embrace clearing and grubbing and did not embrace sinkage?

Ans. I knew it did not include clearing and grubbing, because it has only cubic yards; and, as to the sinkage, Kirkpatrick gave me the amounts of sinkage, as stated in my answer to interrogatory 12, at a different time, as additional to the other figures, and I know from calculations made by Mr. Flynn for me that the figures given for the Shelby Ridge and Willow Lake and Flower Lake, by Kirkpatrick did not include sinkages.

And for further answer to your X-int. 18, I will say that I am not sure whether Kirkpatrick told me that he had embraced 20,000 yards as sinkage, in his estimate of 96,000 yards for the Yazoo Pass, or whether he told me that he would allow 20,000 yards for sinkage at that point in addition to the 96,000 yards; as to all the other work I have other criteria, which enables me to say that the sinkage was not 'in-
236 cluded in the estimates which I gave in answer to int. 10, and I feel confident that the 20,000 yards for Yazoo Pass was not embraced in the 96,000 yards, because I put the 20,000 yards down among the allowances that I know were additional.

X-int. 19. State when and where it was Kirkpatrick gave you the amount of sinkage, which he would allow, as you give it in your answer to int. 12. Did you write down the figures at the time?

Ans. I think in his office at Friar's Point. It was some time in the early part of 1872; I cannot give the date. I did write down the figures at the time.

X-int. 20. *X-int.* 20. How much of the work did Kirkpatrick embrace in his estimates as Yazoo Pass work?

Ans. Yazoo Pass, Gordon's Break, one other small break between Gordon's Break and Delta, and all repairs on old levee between Yazoo Pass and Delta.

X-int. 21. Why did you go back upon work after it had been received as completed?

Answer. Because I was directed to do so by W. R. Kirkpatrick, as chief engineer, or M. S. Alcorn, as president of the board, on two or three occasions, after the chief engineer had received the work, and several times after the president of the board had also expressed
237 himself satisfied with it. I was sent back to do more work without additional compensation.

X-int. 22. Where is Flynn's estimate of clearing and grubbing which you mention in your answer to int. 11? File it with your answer to the question, if you can.

Ans. I will file it in Flynn's own writing, but not signed by him; I will make it Exhibit L, Stansell. It is not a formal estimate, but a memorandum given us for our information and to aid us in these proceedings.

X-int. 23. Can you now state what amounts of work you have paid subcontractors for on monthly estimates or final estimates on different portions of your contracts? Give these amounts with names of subcontractors.

Ans. I settled with Kane and Kane for 27,000 yards of work; that is, I paid them for that much on estimates furnished by the engineer, but no final settlement has been made, that being deferred until our settlement with the levee board; our last payment on this work was made early in 1872; this 27,000 yards was repairs on old levees and one small breach between Gordon's Break and Delta. After they did this work they went to Flower Lake. I paid them for in the neighborhood of 25,000 yards of work on Flower Lake levee. This was not a
238 final settlement, for the final settlement was deferred until our settlement with the levee board. I paid Kinsey and Arnold, or C. S. Kinsey and Co., for 103,000 yards of work on Flower Lake. This was a final settlement with them. We paid Magoerney and Fogarty for about 100,000 yards on Flower Lake. This was a final settlement with them. We paid Tom Daly for 44,800 yards of work on Port Royal levee. This was a final settlement with them, made upon the final estimate of the chief engineer, which he handed me for the purpose and which I returned to him. We paid C. C. Wilburn for six or seven thousand yards on Flower Lake. This was a final settlement. I paid the station contractors mentioned before, upon the estimates of their work given by the engineer; I cannot state their names and amount of work now; all of these subcontractors were paid by us in money. We paid to these subcontractors for in the neighborhood of 75 acres of clearing, in addition to the above payments. This was also paid in money. The rate paid them for clearing was about $30 per acre, cash.

X-int. 24. Who made the partial or informal estimates upon which you paid your subcontractors; were they made from measure-
239 ments of the work or from the original notes taken in laying off the work?

Ans. They were made by the chief engineer; and for all the new work, so far as I know, were made from the original notes. I was present when some of them was made. As for the estimates of repairs on the old levees, I don't know how they were made.

X-int. 25. From whom did you receive the bonds when paid?

Ans. I had nothing to do with the financial affairs; Mr. Partee received the bonds and negotiated or handled them, in raising money to carry on the work.

X-int. 26. State what you know about two receipts being given by Partee and Stansell to the levee board, and why the first was destroyed and the other given.

Ans. When Partee and Stansell agreed to settle upon the terms prescribed by the board, a final receipt was signed by Mr. Partee. Major Howe, the treasurer of the board, did not have bonds enough to pay us in full, and gave a due-bill for the balance. After this settlement had been arrived at—I do not remember how long after it was discovered that in the settlement the board had agreed to pay us for some work which Lindsey had done on his contract, and for which the board had settled with him—this amount had to be deducted, and, to do it, another receipt was given and the first one destroyed. This is only
240 my recollection of the transaction, Mr. Partee always giving such matters his personal attention, and being there present, and I not giving them any attention, I, of course, know very little about it.

X-int. 27. Did you or Partee and Stansell ever lend money or make presents to the engineers of the levee board, or any of them? If so, state when, and to whom.

Ans. I lent Maj. Kirkpatrick money several times. I think it probable that I have lent them all who were with me in my work money. I I always had money. I can say that Partee and Stansell never made them any presents. I bought a horse for Maj. Kirkpatrick, at his request, when I was buying a lot of stock for our own use, or rather I bought two horses, and gave him choice of them. The understanding was that he was to pay for the horse as soon as he was able. He frequently alluded to it, and regretted that he was not able to pay for him, & but never did pay for him. While everything was prosperous I felt willing to give him the horse, and told him not to worry himself about it, and that he need not pay until I called on him for it. Kirkpatrick paid me all the borrowed money I ever loaned him. If I lent the others any money it was small amounts, and they paid me too, or I for-
241 got it. I want to add to this answer 27 that I never lent money or made presents to the engineers to induce them to make any false measurement or false statement, or do anything else improper.

X-int. 28. Does Kirkpatrick owe you anything now?

Ans. He does; about 1,700, for which I sued him and got judgment, but failed to collect.

X-int. 29. What is this indebtedness for?

Ans. About $1,300 of it is for property sold to him while he was a contractor on the Mobile and Northwestern Railroad. The other $400 is a claim transferred to me by my brother, R. L. Stansell.

X-int. 30. Was Mr. Flynn ever employed by you to measure any of your levee work? If so, when, and what work?

Ans. I don't think he was ever employed by us to measure any of our work.

X-int. 31. Did not Maj. Mickle and Mr. Flynn measure the repairs done by you on the old levee? If so, when was it, and how did they come to do it?

Ans. They did; I think it was in the summer of 1872. There was some understanding between the levee board and Partee and Stansell that they should measure that work, in order to try and arrive at a settlement. They did not agree upon any estimate of the work. I don't know what the trouble between them was.

242 X-int. 32. Did not the levee board write Partee and Stansell to send an engineer with Mickle when he measured your work, and did you send one?

Ans. Not that I know of; we did not send one unless we sent Flynn when he and Mickle measured the repairs; we did not send one with Mickle on his general measurement.

X-int. 33. With which of your subcontractors have you had lawsuits about work done for you on your contracts with the levee board? When were those suits?

Ans. With C. S. Kinsey and Co. and Magourney and Fogarty, also C. C. Wilburn. The suit with Wilburn was at Sardis, Miss. The suits with Kinsey and Co. and McGoerney were in Memphis. I do not remember in what court.

X-int. 34. When and how did Partee and Stansell pay Fleece and Cobb for their services in connection with the arbitration, as stated in your answer to int. 19?

Ans. I think Mr. Cobb was paid by Mr. Partee in money. Mr. Partee and I gave Col. Fleece our notes, each for two hundred dollars. I don't know whether Mr. Partee has paid his note or not. I have not paid mine.

X-int. 35. Have all the other items stated as expenses of that arbitration in your answer 19 been paid by Partee and Stansell?

243 Ans. All but sixty dollars that I know of. This sixty dollars is for board at Friar's Point.

X-int. 36. Were the specifications by which your work for the levee board was to be done the printed specifications attached to the levee law?

Ans. When the contracts were made the specifications had not been printed, but they were the same which were afterwards printed in the pamphlet with the levee law, and during the progress of the work those printed specifications were what we were required to go by.

X-int. 37. Are you and Kirkpatrick friendly now; if not, why are you not?

Ans. We never had any falling out. The only ill-feeling I have towards him is because he deceived me, and did not pay me what he owed me when he was able to do so, in part, if not in full.

And further deponent saith not.

J. W. STANSELL.

Subscribed and sworn to before me at my office in Memphis this 22nd day of May, 1875.

[SEAL.]

HUNSDON CARY,
U. S. Com'r, Dist. of West Tenn.

244 *Exhibit L., Stansell.*

No. acres of clearing in Flower Lake levee						66.3
"	"	"	"	"	Willow " "	25.0
"	"	"	"	"	Yazoo Pass "	13.7
"	"	"	"	"	Repairs between Yazoo Pass and Delta levee	14.0
"	"	"	"	"	Shelby Ridge	71.0
"	"	"	"	"	Port Royal	10.0
"	"	"	"	"	Total	200.0

All formalities waived in the taking of the foregoing deposition, May 22nd, 1875.

HENRY CRAFT,
Sol'rs for Levee Board.

Filed June 29th, 1875. G. R. Hill, clerk.

245 On the same day and date, to wit, on the 29th day of June, A. D. 1875, still another deposition was filed in said cause in the words and figures following, to wit:

Deposition of J. R. Dickinson.

U. S. OF AMERICA,
Northern Dist. of Miss.

In the district court of said district. In equity.

PARTEE AND STANSELL
vs.
THE LEVEE BOARD OF THE STATE OF MISSISSIPPI, District No. 1, and others. } No. 197.

Deposition of J. R. Dickinson, taken on behalf of the above complainants, at the office of Estes and Ellett, in Memphis, on the 12th day of May, 1875, by consent of the counsel of both parties.

Int. No. 1. Interrogatory first. State your name, residence, age, and occupation.

Ans. My name is J. R. Dickinson; present residence, Memphis, Tenn.; age, about thirty; I am not now in any business.

Int. 2. Interrogatory second. Were you in the employ of Partee and Stansell in 1871 and 1872; if yes, at what place, and what were your duties?

Ans. I was in the employ of Partee & Stansell from October 6th, 1871, to June 12th, 1872, in Tunica and Coahoma counties, Mississippi, while they were engaged there in building and repairing levees. I was employed by them as a clerk, and my duties were to order all sup-
246 plies, keep account of all time of the workmen, and to pay off the hands employed, and to keep all their accounts.

Int. 3. Interrogatory third. Have you any knowledge of the work done by Partee and Stansell on the Yazoo Pass and Gordon's Break levees, and of its being received and accepted by Kirkpatrick, the chief engineer, and McCann, the inspector; if so, state all you know on the subject and how you obtained your knowledge?

Ans. We had a camp at or near the Yazoo Pass, from which the work was done at both the pass and Gordon's Break and on the levee between those points. The work at those places was received. Mr. Kirkpatrick, the chief engineer, and Mr. McCann, the inspector, told me frequently that it was finished and all right. We were ordered to break up our camp, and we broke it up and removed from there to Willow Lake, where we established a camp about two miles and a half from the camp at the pass.

Int. 4. Interrogatory fourth. Do you know whether, after the work at the pass and at Gordon's Break and between those points was finished and received and accepted by the said engineer, the said Partee and Stansell were required to return to said points and do other work? State all your knowledge.

Ans. Yes; I do know that after the said work was finished and received by the chief engineer and had been put up to the required
247 measure the said Partee and Stansell were required by the engineer to return to those points some months after the work had been finished and put additional dirt on the levees there. They sent

hands down from the camp at Willow Lake every morning while engaged at the work, which hands returned to the camp every evening. They had sold out their mules and were obliged to purchase other mules to do this additional work required of them.

Int. 5. Interrogatory fifth. Did you give any supervision to this work, and have you any knowledge how much work was done? State all your knowledge herein.

Ans. I kept an account of all the hands that were employed on the said additional work and of the time of each hand. We went back there and began this additional work on the 22nd of April, 1872, and worked at it until the sixth of June, with twelve to fifteen hands and four two-mule teams. I settled with the hands and paid them according to the number of days' work done by them, as kept by me. There were 565¼ days' work done at the pass and at Gordon's Break between the 22nd of April and the 6th of June, 1872, on said additional work. I put down every day's work, every half day, and every quarter of a day's work done by each hand; indeed, all the time that any pay was allowed for. The account was kept in a book, and I have exam-
248 ined it to-day and carefully added up the account as kept by me, and found it to amount to the number of days above stated (565¼). This includes no estimate for the teams. The aggregate number of days' works done by the teams was, according to the same account, 125 days. We had to pay the men employed on that work two dollars and a half per day. The force was well organized, disciplined, and managed, and the hands all worked well. It was said to be the best force ever organized in Mississippi. All did full day's works, and put up from ten to twelve yards of earth per day.

J. R. DICKINSON.

Subscribed and sworn to before me this 17th day of May, A. D. 1875.
[SEAL.] HUNSDON CARY,
U. S. Com'r, Dist. of West Tenn.

We waive cross-examination and formalities, but reserve all exceptions on the ground of competency and relevancy.

HENRY CRAFT,
Sol'r for Levee Board.

Filed June 29th, 1875. G. R. Hill, clerk.

249 On the same day and date, to wit, on the 29th day of June, A. D. 1875, still another deposition was filed in said cause in the words and figures following, to wit:

We agree that the within statement of G. B. Fleece may be read in evidence as the deposition of said Geo. B. Fleece.

HENRY CRAFT,
Sol'r for Levee Board.

U. S. OF AMERICA,
Northern Dist. of Miss.:

District court of said district. In equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1, AND others. } No. 197.

No. 3.

FRIAR'S POINT, MISS., *Dec. 5th*, 1872.

Col. GEO. B. FLEECE, *Civil Engineer:*

DEAR SIR: There are some necessary preliminaries to be arranged before we can enter upon our duties as a board of arbitrament, one of which, the deposit of bonds, was not arranged to the satisfaction of Maj. Alcorn and myself, and we go to Memphis to have the matter adjusted. If it is satisfactorily arranged, as I doubt not it will be, the measurement will go on; otherwise I shall feel constrained
250 to decline any further action. In regard to the measurement, having full confidence in yourself and Capt. Cobb, I will sanction whatever you do; so that you can go ahead with it until my return, which I hope will be on Saturday morning.

Yours, truly,

B. MICKLE,
Ch'f Eng'r, Miss. Levees.

No. 4.

COAHOMA COUNTY, MISS., *Dec. 12th*, 1872.

To M. S. ALCORN,
Pres't Board of Commissioners, Levee Board, District No. 1:

SIR: We propose to introduce proof before the court of arbitration touching the matters following:

1st. The estimates rendered by the engineers in charge of the work during its progress, their several orders touching the same, and the legal and equitable value of the same, in any matter of pecuniary loss or gain arising therefrom.

2nd. The probable diminution of cubic quantities of embankments, by reason of wastage, shrinkage, sinking, packing, etc., from the time when constructed till now.

3rd. The character of foundations of the several levee sections at the pass, Gordon's Break, and numerous sloughs and bayous, and the probable amount of material required to fill the same over the amount that at any time has appeared within the cross-sections thereof.

251 4th. The clause in the contract touching shrinkage, its meaning, and the adjudication of that question by the chief engineer of your board prior to and about simultaneous with the signing of the original contract.

5th. The amount expended by us for days' work on the Pass levee, the probable value of a day's work, and the value of this exhibit as a basis for determining the amount of work done at that point.

6th. The amount and value of work done by order of your engineer, outside of the true levee line, together with some items of extra work.

7th. The quantity of work done, as shown by the original field-notes and estimates, and the value of same as matters of proof.

8th. The fact that the said engineers have had no inducement of any character whatever, for which we are responsible or of which we have knowledge, to render to us an overestim'e of our work.

9th. The damage done us by the repeated refinishing of work, under orders of your engineers.

10th. The payments made to us for the Willow Lake levee in bonds at par, and the question of right in this matter.

10th. The delay of a final estimate, of various payments, and the damage to us arising therefrom.

11th. Representations made to us by your agents touching the Taylor and Lindsey contract, and the effect thereof.

Very respectfully, &c.,

PARTEE AND STANSELL.

A true copy.

G. B. FLEECE.

252

No. 5.

DELTA, MISS., *Dec. 13th*, 1872.

Col. GEO. B. FLEECE, *Civil Engineer.*

D'R SIR: I' arranging the preliminaries to our organization as a board of arbitrament on the questions of difference between the levee board of this district of the first part, and Messrs. Partee and Stansell of the second part, I am notified that claims will be made, and testimony offered clearly in contravention of the terms of the agreements from which our authority is to emanate, and, as such proceedings would render our decision unsatisfactory and void, I cannot proceed further in the matter unless it is distinctly understood that the following provisions of the contracts and agreements entered into by the said parties, and on which our authority is understood to be based, shall be strictly observed, viz:

(1)1st. That no shrinkage or settling is to be paid for. (2)2nd. That no estimate shall be made of any work which has not been completed in accordance with the contract and specifications entered into for its construction, until it shall be so completed, and should any improper materials be found in the levee they shall be removed, and said levee reconstructed in accordance with the original contract before it shall be received or estimated. (3)3rd. That no oral or written evidence shall
253 be taken, except in relation to the measurement of levees, and then only in cases where occular demonstration or actual measurement is impossible by reason of the objects sought to be measured being hidden under the base of the embankment or other object.

Respectfully,

B. MICKLE,
Ch'f Eng'r Miss. Levees.

No. 6.

DELTA, MISS., *Dec. 13th*, 1872.

B. MICKLE, *Ch'f Eng. Miss. Levees.*

DEAR SIR: In your communication of this date, addressed to me as "Civil Engineer," you assume that a board of arbitrament does not exist. I think that such board does exist, fully organized, duly commis-

sioned, and instructed, and refer you to your appointment by your board, my nomination of R. L. Cobb, and your acceptance of him as third party to said board; to the contract between your board and Partee and Stansell, dated Dec. 12th, in which we are recognized as such board, and the "memoranda which shall govern said board in adjusting all matters brought before them," fully set forth, and to your co-operation with us in the field at work for several days, in harmony as a member of said board. Then the board of arbitrament is in existence, and I no longer know you in the business before us otherwise than as a coarbitrator, and of consequence cannot properly go
254 back to matters by you deemed "preliminary" to the organization of said board. 2nd. But admitting that you are right in the position (that no board has been organized), then I deem any step preliminary thereto which involves the expression of an opinion upon any point connected with the business likely to come before said board for adjustment or determination as illegal and improper. I am ready for any duty appertaining to my office as coarbitrator in the matters referred to us (B. Mickle, R. L. Cobb, and Geo. B. Fleece), fully organized and commissioned a "board of arbitrament by the joint action, contract, et cetera, of the Board of Commissioners, Miss. Levees, District No. 1, and Partee and Stansell, and our several proper acts up to date in harmony with the contracts perfecting the organization thereof. I am therefore ready for official action, and that our coarbitrator, R. L. Cobb, may be informed of the present status of affairs, I, as in duty bound, have shown him your letter, and this, my reply thereto, and have requested his prompt action in the premises as his duty as coarbitrator, may direct.

Very respectfully, etc.,

GEO. B. FLEECE,
Member of Board of Arbitrament.

Copy handed Mickle this day, Dec. 15th.

G. B. F.

No. 7.

DELTA, MISS. *Dec. 13th*, 1872.

B. MICKLE and GEO. B. FLEECE,
Member of Board of Arbitrament:

255 GENTLEMEN. I am ready and anxious to proceed with the duties imposed upon us, B. Mickle, Geo. B. Fleece, and R. L. Cobb, a board of arbitrament organized by contracts between the Board of Levee Commissioners of Mississippi, Levee District No. 1, and Partee and Stansell, dated October the 4th, 1872, and December the 12th, 1872.

And I hereby demand from you the reasons why we are not proceeding with our duties as a board of arbitrament.

Respectfully,

R. L. COBB,
Member of Board of Arbitrament.

Copy of this handed to B. Mickle on the 16th inst., and in my presence, and at my request shown by him to Geo. B. Fleece.

R. L. COBB.

No. 8.

FRIAR'S POINT, MISS., *Dec. 17th*, 1872.

Col. GEO. B. FLEECE, *Civil Engineer:*

DEAR SIR: Your communication, dated 13th inst., but which was handed me by yourself on yesterday, is unsatisfactory, because it ignores the matter of my note of same date, to which it purports to be a reply. You err in supposing that a board of arbitrament to adjust questions of difference between the levee board of the one part and Messrs. Partee and Stansell of the other part has been organized, nor will it be until the contracts and agreements from which its authority is to be derived, are fully understood by all the proposed members of it.

256 You err also in saying I have accepted Capt. Cobb as the third engineer. In order that no delay might occur in selecting a third member of said board, I informed you that I knew of no reason why he would not be acceptable to me when the preliminaries were satisfactorily arranged. I had no right to accept him officially then, as I had no authority to act at all until they were sett'ed. It was expressly understood by Mr. Partee and myself, in Memphis, that the board of arbitrament could not and would not be organized until your suggestion and my acceptance of the third member of the board had been officially made in writing. As to our working together for several days, you are aware that, to avoid the loss of time while the preliminaries were being arranged, I consented that the measurement should go on, to be ratified when the organization should be completed.

Respectfully yours,

B. MICKLE.

No. 9.

FRIAR'S POINT, *Dec. 17th*, 1872.

B. MICKLE, *Ch'f Eng., etc.:*

I desired to join you in a reply to the note of our coarbitrator, R. L. Cobb, dated Dec. 13th, but from yours of this date to me, am l*ead* to conclude that you ignore him, and have no reply for him. I also understand that you refuse te proceed with work assigned us as a board of arbitrament. I give you notice that I, if joined by any

257 one member of said board, will on to-morrow proceed with the measurement and make award, and claim therefor the exact value it would have if made by full board.

Yours, respectfully, etc.,

GEO. B. FLEECE,
One of Board of Arbitrament.

Copy sent to Mickle on boat about to leave for Memphis—sent by boy. Dec. 17th, 10 a. m.

GEO. B. FLEECE.

No. 10.

FRIAR'S POINT, MISS., *Dec. 17th*, 1872.

R. L. COBB,
Member of Board of Arbitrament:

DEAR SIR: Pursuant to the provisions embraced in a contract between the Board of Commissioners, Mississippi Levee, District No. 1,

and Partee and Stansell, dated October 4th, 1872, I notified you of your nomination by me as third party to said board, and have obtained from B. Mickle his unqualified acceptance of you as the said third party. I notified you of this fact also, and upon agreement with said Mickle as to the time and manner of entering upon the duties of said board, requested your attendance. Accordingly we met at Memphis on the 6th day of Dec. inst. We were then informed by said Mickle, in a note dated Dec. 5th, that certain preliminaries had to be arranged before we could enter upon our duties as such board, naming as one the
258 deposit of bonds by Partee and Stansell. Soon thereafter said Mickle announced the said preliminary step perfected, and accordingly we (Mickle, Cobb, and Fleece), in company with the president of the levee board and J. W. Stansell, left Memphis for this point, and on the ninth inst. commenced work, B. Mickle, R. L. Cobb, and Geo. B. Fleece present, and on that day completed the measurement of Port Royal levee. On the 10th we continued measurement on the Shelby Ridge levee. Meantime the expenses of said work, including hotel bills of each of us, were paid by said Stansell. On the 12th, on application of B. Mickle, work was suspended with a view to perfecting our organization, and he named as this preliminary the authorization of our acts and regulation thereof by a contract between the said levee board and Partee and Stansell, which contract he himself wrote, in all its more important points, submitted to the parties thereto for their signatures, and then, the preliminaries finished, we continued our work on Shelby Ridge levee. On the 12th Partee and Stansell filed their points, touching which they proposed to take proof. On the 13th I received from B. Mickle, ch'f eng'r, the accompanying communication, marked A, addressed to me as a civil engineer. The letter marked B is my reply thereto. Meanwhile I received your communication of Dec. 13th, marked C. Then, to-day, I received B. Mickle's reply to my letter to him of Dec. 13th. Said letter is marked D. Then I, this day, replied to
259 him, in letter marked E, and now, to your communication of Dec. 13th, I reply, that from the foregoing you will know the reason why our work as a board of arbitrament is suspended.

That no point may be wanting in your inquiry as to your duty, I transmit herewith other papers, to wit, the contracts dated September, 1871, October, 1872, and December 12th, 1872. Also one other letter from B. Mickle, dated December 5th, marked F. These, with your concurrent personal knowledge of events bring the case up fully before you. I now propose:

1st. That we officially lay before the best legal counsel accessible to us now all the facts in the case, and then, thus advised, that we shall take such further action as we shall deem it our legal duty to take.

GEO. B. FLEECE,
Member Board of Arbitrament.

No. 11.

FRIAR'S POINT, MISS., *Dec. 17th*, 1872.

GEO. B. FLEECE,
Member of Board of Arbitrament:

SIR: I hereby acknowledge the receipt of your communication of this date, accompanied by the papers referred to in said communication. In reply will state that I am ready to proceed with the duties imposed upon

us as members of the "board of arbitrament," referred to in the contracts mentioned by you.

Respectfully,

R. L. COBB,
Member of Board of Arbitrament.

260 No. 12.

FRIAR'S POINT, MISS., *Dec. 12th*, 1872.

We, Geo. B. Fleece and R. L. Cobb, and in the absence of B. Mickle, one of the members of this board, being satisfied that he, B. Mickle, has withdrawn without just cause, and anxious to acquit ourselves rightly in the full discharge of every duty imposed on us as members of this board of arbitrament, agree that we will immediately lay before Judge Jas. T. Rucks all the facts, papers, etc., in the case, and ask his legal advice as to the legal position we occupy, and our further duty in the premises.

GEO. B. FLEECE.
R. L. COBB.
Members of Board of Arbitrament in the case of Mississippi Levee Board, District No. 1, and Partee and Stansell, Contractors.

No. 13.

FRIAR'S POINT, MISS., *Dec'r 18th*, 1872.

Col. GEO. B. FLEECE and R. L. COBB:

GENTLEMEN: I have carefully examined all the papers and correspondence which you, as a part of a board of arbitration (composed of yourselves and Maj. Mickle), selected by Messrs. Partee and Stansell, and Board of Levee Commissioners, District No. 1, for the purpose of arbitrating and settling differences pending between Partee and
261 Stansell and said board, growing out of work done by Partee and Stansell for said board, which you handed to me on yesterday.

In regard to the question propounded as to what is your duty as a part of said board of arbitrators, upon the withdrawal and refusal of Maj. Mickle (the other member) further to assist in the matters so submitted for your arbitration, I am of opinion that this withdrawal and refusal of Maj. Mickle to act, annuls the submission made to you all as a board, and that you have no authority further to act in the matter. I think it proper that you should inform the parties by whom the submission was made of what has occurred, who, if they desire to do so, can appoint some one instead of Maj. Mickle, and the business can be completed.

Respectfully,

JAMES T. RUCKS.

No. 14.

FRIAR'S POINT, *Dec. 18th*, 1872.

To M. S. ALCORN,
President Board of Levee Commissioners of Miss. Levee District No. 1, and
PARTEE AND STANSELL, *Contractors.*

Pursuant to provisions of contracts by you executed, dated October the 4th, 1872, and December 12th, 1872, B. Mickle, Geo. B. Fleece, and R. L. Cobb were constituted a board of arbitrament. On or about the

10th inst. R. L. Cobb, B. Mickle, and Geo. B. Fleece met at Mem-
262 phis, proceeded thence to the work, and on the 9th inst. entered on the same.

B. Mickle, having suggested the propriety of a contract between you, further providing for the work assigned us, prepared said contract in all its more important provisions, presented the same to you for signature (on the 12th inst.), and then the same being duly executed, we, in company with said Mickle, proceeded in the further prosecution of our work up to the evening of December 12th.

On the morning of December 13th, B. Mickle offered for the acceptance of our coarbitrator, Geo. B. Fleece, a written statements of points to be conceded, as a condition precedent to his further proceeding with the work, and in said letter stated substantially that the board of arbitrament had not been organized, and these demands he considered as preliminary thereto. To this communication Geo. B. Fleece replied, protesting that said demands, if preliminary to the organization of the board, were improper and unreasonable, declaring at the same time that the said board had been fully organized, commissioned, and instructed.

Just prior to the receipt of the said letter from B. Mickle, Partee and Stansell had presented to him a written notice, addressed to M. S. Alcorn, president, of certain matters touching which they intended to present testimony; but the said notice contained no demand or claim whatever, and the same was not presented to our board, or either
263 of us, for action thereon, and this said notice was, so far as we know, the only cause of the demand of said Mickle above referred to. A correspondence followed, which yesterday concluded with the withdrawal of B. Mickle from our board, our work, and presence.

We therefore notify you that the business intrusted to us as a board of arbitrament is suspended by the withdrawal and absence of said Mickle, and we, the remaining members of said board of arbitrament, advised by counsel that we have no right to proceed in the absence of said Mickle, report to you this our present position, and request your prompt action in the premises. Our whole correspondence as a board of arbitrament is subject to your inspection.

Awaiting your instructions, we request an immediate reply.

Very respectfully, &c.,

GEO. B. FLEECE,
R. L. COBB.

True copy:
COBB.

No. 15.

FRIAR'S POINT, MISS., *Dec. 20th* 1872.

GEO. B. FLEECE AND R. L. COBB,
Remaining members Board of Arbitrament.

GENTLEMEN: Replying to your communication of Dec. 18th, inst., we have to say: The position of affairs, as you have reported the
264 same to us, brings up questions which it becomes necessary to refer to the board of levee commissioners and Partee and Stansell, and with this view we name Dec. 30th as a day when you are requested to meet us at the Peabody, at Memphis, where appropriate action in the premises will be taken.

M. S. ALCORN, *Pres't.*
PARTEE AND STANSELL.

Marked 10.

MEMPHIS, *Jan'y 9th*, 1873.

B. MICKLE,
Ch'f Eng'r, &c., Miss. Levees:

DEAR SIR: Understanding that you require, in addition to my verbal nomination and my several written statements of my selection of Capt. R. L. Cobb as coarbitrator, that I shall hand you a more formal official notification, I now, as the appointee of Partee and Stansell, do notify you, as the representative of the Board of Levee Commissioners of Mississippi, District No. 1, that I do again designate the said R. L. Cobb as coarbitrator, to act with us as the third party in the board of arbitrament, provided for, etc., in the contract of Oct. 4th, 1872, between said levee board and Partee and Stansell. I request also your prompt official written acceptance of him as said coarbitrator.

Very respectfully, &c.,

GEO. B. FLEECE.

265 Marked 11.

MEMPHIS, TENN., *Jan'y 9th*, 1873.

Col. GEO. B. FLEECE, *Chief Engineer.*

DEAR SIR: I am just in receipt of your note of this date suggesting, as the representative of Messrs. Partee and Stansell (from whom I had received a previous communication notifying me of your appointment), Capt. R. L. Cobb, to act with us as third party in the board of arbitrament, provided for in the contract of Oct. 4th, 1872, between said levee board and Partee and Stansell. Since our casual conversation on the subject last fall, circumstances have arisen which, while they do not affect his high character as a gentleman or as standing as a brother engineer, render him unacceptable as a coarbitrator in the matter referred to.

I am, very respectfully, y'r ob'd't ser'v't,

B. MICKLE,
Ch'f Eng. Miss. Levees.

MEMPHIS, *Jan'y 10th*, 1873.

B. MICKLE, Esq., *Ch'f Eng. Miss. Levees.*

DEAR SIR: I understand from your letter of yesterday that you reject Capt. R. L. Cobb as coarbitrator, and take the position that
266 your former recognition of him as such amounted to nothing more than "a casual conversation on the subject."

I request that you will now answer: Am I to understand that you refuse to further aid in the arbitration, Capt. R. L. Cobb being a member of the board?

Very respectfully, &c.,

GEO. B. FLEECE.

(No. 18.)

MEMPHIS, *Jan. 18th*, 1873.

B. MICKLE,
Chief Engineer Miss. Levees and
Member of Board of Arbitrament:

Waiving the question as to the validity of the appointment of R. L. Cobb as a third engineer of our board of arbitrament, I now enumer-

ate the following-named gentlemen, each of which is high in the profession and known to be engineers of high standing: Edward Turner, W. S. Moon, E. C. Lewis, W. F. Foster, Theo. Hartmann. Either one will be acceptable to me. I request an immediate reply, accepting or refusing. As soon as nomination and acceptance is made, I will desire to proceed again with the work.

Very respectfully, &c.,

GEO. B. FLEECE,
Member Board of Arbitrament.

267 HULBERTON, MISS., *Jan. 20th*, 1873.

DEAR SIR: Your communication of the 18th inst. was handed me by Capt. Stansell on yesterday (Sunday) morning. Before completing the organization of the board of arbitrament provided for in the agreement of Oct. 4th, 1872, between the levee board of this district, and Messrs. Partee and Stansell, it is necessary to have an understanding as to the scope of our authority, measurements, &c. The principal points I allude to are embraced in a communication addressed to you by me on the 13th day of December, 1872, to which I refer you.

Very respectfully,

B. MICKLE,
Ch'f Eng. Miss. Levees.

Col. GEO. B. FLEECE,
Member Board of Arbitrament, &c., Memphis, Tenn.

MEMPHIS, *Jan'y 30th*, 1873.

B. MICKLE,
Chief Engineer Miss. Levees,
and Member of Board of Arbitrament:

DEAR SIR: Your letter of 20th inst. received. You do not therein accept or reject any of my nominations of a coarbitrator, but you refer back to positions taken and demands made by you in your letter of Dec. 13th, 1872.

268 it would have been right for you to have notified me during the long interval of my effort to dispose of what you seemed to regard the only obstacle to progress, vs the case of Capt. R. L. Cobb, that you intended to require of me, as a condition preliminary to the organization of the board, or even appointment of a third engineer, that I should concede the points made in said letter of Dec. 13th.

But you knew on Dec. 13th my position with regard to said points, and that I deemed your demand unreasonable, and that compliance on my part would have been dishonorable. A more consistent course would have been for you to have remitted the mere side issue as to the validity of R. L. Cobb's appointment, &c., and made your refusal to act stand upon the ground of your present refusal.

As the matters stand I conclude from all the facts:

First. That you now impose on me a condition of action with me which you knew I refused to allow more than six weeks ago.

Second. That you regard all our acts as a board of arbitrament as done without authority.

Third. That no board of arbitrament exists or ever has existed.

Fourth. That you demand of any one with whom you will act as coarbitrator, a pledge that he will decide certain vital points
269 your way.

Fifth. That you are not ready or willing to act now.

Sixth. That in all you have done or will do, you are acting under instructions from your board.

Seventh. That in fact neither you nor your board intend that the arbitration provided for in contract of Oct. 4th or Dec. 12th, shall be carried out.

Forced to this conclusion, after a faithful effort to advance the business with which we have been charged, I have no course left me but to notify Messrs. Partee and Stansell that, having done all I could do, I will retire, leaving them with such rights as they may have under their several contracts, violated by you, and that, as you admit, by the order of your board.

Very respectfully, &c.,

GEO. B. FLEECE,
Member of Board of Arbitrament.

U. S. OF AMERICA,
Northern Dist. of Miss.:

In the district court of said district.

PARTEE AND STANSELL
vs.
MISS. LEVEE BOARD, DISTRICT NO. 1, AND others. } No. 197.

270 Personally appeared before me, the undersigned, a commissioner appointed by the circuit court of the United States for the district of West Tennessee, George B. Fleece, who, being duly sworn, says, that the nineteen papers attached to this affidavit are the originals or copies of letters and documents in relation to the matters in litigation in the foregoing-entitled cause; that the letters signed "B. Mickle" are original letters written by said Mickle, the chief engineer of said levee board and member of the board of arbitrament, composed of said Mickle, R. L. Cobb, and this affiant; those signed G. B. Fleece, Geo. B. Fleece, or George B. Fleece are copies of letters written by this affiant, and addressed as they severally purport on their face; those signed R. L. Cobb, are originals or copies of letters written by said Cobb, and addressed as they severally purport on their face; the paper dated Dec. 12, 1872, signed by Partee and Stansell, and addressed to M. S. Alcorn, pres't of board of com'rs of levee district, is a true copy of the points of proof furnished by Partee and Stansell to said levee board, and the paper signed J. T. Rucks is the opinion furnished to said Fleece and Cobb by said Rucks, and that the paper dated Dec. 20th, 1872, signed by M. S. Alcorn, pres't, and Partee and Stansell was signed by said parties in my presence.

GEO. B. FLEECE.

Subscribed and sworn to before me this 18th day of March, 1873.

[SEAL OF COMMISSIONER.] HUNSDON CARY,
U. S. Com'r Dist. West Tennessee.

Filed June 29th, 1875. G. R. Hill, clerk.

271 On a certain day and date, to wit, June 29, 1875, deposition of W. O. Flynn was filed in this cause, in words and figures following, to wit:

U. S. OF AMERICA,
Northern Dist. of Miss.:

Circuit court of said district. In equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1, AND others.

The deposition of W. O. Flynn, a witness on the part of complanants in the foregoing cause.

Interrogatory 1st. State your name, age, residence, and occupation.

Ans. Name, W. O. Flynn; age, 35; present residence, Helena, Ark., occupation, civil engineer.

Interrogatory 2nd. What was your occupation from 1st September, 1871, to the summer of 1872? What position did you occupy during that time; in whose employment; what were your duties?

Ans. During the period named I was the principal assistant engineer in the employ of the Levee Board of Mississippi District No. 1, com-
272 posed of Tunica & Coahoma counties, and parts of other counties. It was my duty, under the direction of W. R. Kirkpatrick, the chief engineer, to lay off the levees, locate the lines, to superintend the contractors and direct them as to the manner of doing the work, and to see that they performed the work according to contract, and to make the monthly estimates of the work done by each contractor, and return the same to the chief engineer for the purpose of making the monthly payments. These estimates were intended to be an approximation to the amount of work done, never exceeding the actual amount.

Interrogatory 3d. State the general location and route of the levee in which you were employed as above stated.

Ans. It was along the bank of the Miss. River, in the counties of De Soto, Tunica, and Coahoma.

Interrogatory 4th. Do you know complainants, H. A. Partee and J. W. Stansell? Were they contractors for, or did they perform any part of, said work on said levee? If so, state what work they performed, and at what localities, giving the names by which such localities were known.

Ans. I do know the complainants, Partee and Stansell. They
273 did perform work on said levee, as contractors, in the counties of Tunica and Coahoma, commencing at the most northern part of the work they performed. The first work was at a place called Flower Lake, about three or four miles below Austin. The work done there was about three $\frac{6}{10}$ miles long. Some of it was heavy work, and some lightest, ranging from six feet high to fifteen feet high, averaging about nine or ten feet. There were also some bayous to be filled that were from 15 to 18 feet deep below the surface of the ground. The next place, going south, was Willow Lake, in Coahoma—the upper edge of it—which had been first contracted for by S. A. Lindsley, or Lindsley, Tayton and Cage, and was taken off their hand, by said Partee and Stansell. The work there was about $3\frac{1}{11}$ miles long, or perhaps a little more, part heavy work and part light; some of it was as low as five or six feet; the general average about eight feet; and there were two large bayous and some smaller ones to be filled. The next place was the Yazoo Pass. The work there extended from the

pass to within about a mile of Friar's Point, a distance of about seven miles. The levee at the Yazoo Pass proper was about seven hundred feet long. The work there was very heavy. The bed of the pass was very boggy; poles thrown in would sink in the mud. The greatest
274 height I estimated for the levee in the preliminary survey was 40 to 45 feet. At the upper ends the height was about ten feet, where the new levee adjoined the old one; at the lower end the height was about five or six feet. The levee was repaired all along from the pass to what was known as the Gordon Break, from its being on Gordon's place. The work there was very heavy for the distance of about 500 feet—the exact distance forgotten. From there the levee was repaired down to what was known as the Delta or Shelby Ridge work, which commenced a short distance above Delta, and extended to within a mile or a mile and a half of Friar's Point. Part of the last-named work was very heavy, and part medium. Below Friar's Point Partee and Stansell performed work at a break known as Port Royal Break. The work there was between 2,100 and 2,200 feet long, and was heavy work; do not think there was any place less than ten feet high.

Interrogatory 5. Did you, as assistant engineer, lay off the said work for Partee and Stansell; did you superintend and direct the work done by them; did you make the monthly estimates of the work done, and return the same to the chief engineer?

Ans. I laid off the work at Flower Lake; Willow Lake; the first break above Delta, which had no name that I can recollect;
275 the Shelby Ridge work, and the Port Royal work. I did not lay off the work at the Yazoo Pass, or at the Gordon Break, or the intermediate repairs. By laying off I mean that I run the lines, put in the central stakes, and gave the heights and breadths. I frequently, but not always, put in side stakes, and when I did not I showed the contractors, or their foreman, how to do it. I had so much to do at the time that I was not able to put in all the side stakes. I directed Partee and Stansell what they were to do, and how they were to do it, according to the specifications. I was on the work all the time, going up and down the line, and when I went to any place where any work was going on, if I observed anything done amiss or not according to specifications, I corrected it. I don't know that I ever observed anything wrong, at least anything that was material in any of the work of Partee and Stansell. I made monthly estimates of the work done by them, and by their subcontractors, and returned them to the chief engineer.

Interrogatory 6. Was the work contracted for by Partee and Stansell, or by their subcontractors, done and completed in accordance with your direction, and to your satisfaction, and that of the chief engineer?

Answer. I was not the person to receive the work; that was the duty of the chief engineer and the president of the levee board;
276 so the chief engineer told me, and such was the understanding. I never received any of it. After the dispute had arisen between the board and Partee and Stansell, I was sent by the president of the board to run test levels along the work to ascertain whether it was put up to the proper height. I ran the line on the Flower Lake levee and found it deficient in places in height and breadth, and put Partee and Stansell, or the subcontractor—or that done the work—back on the work to make it perfect. I went away, and another engineer afterwards received the work as completed. This engineer was named Hood. I saw his report, and Maj. Alcorn, president of the board, told me it was satisfactory. Mike Cane was the subcontractor that done that work,

and that was the only work on that part of the line that there was any dispute about, so far as I know. I also run a level along the Willow Lake work and found portions of that a little to' low. But I think that was owing to the chief engineer not having required a sufficient amount of shrinkage, his usage being not to require more than one-tenth for shrinkage, when some soils required one-fifth. I ran this level in the latter part of April or first of May, 1872. It was the first work done by Lindsley & Co., before Partee and Stansell took the contract off their hands. The levee their had been used as a public road for wagons,
277 and so forth, from the time of its completion to the time when I run the level, and is still so used. From the pass down to the Gordon Break we ran levels, and Maj. Alcorn required the levee raised from a foot to four feet. It was raised four feet at the Gordon Break, more or less; before this the levee had been received as complete and satisfactory by Kirkpatrick, the chief engineer, and Mr. McCann, one of the commissioners, who was acting as inspector of levees, and it was after it had been thus received that Maj. Alcorn required the contractors to go back and raise the levees, as above stated. Both Kirkpatrick and McCann had told me that the work had been received as complete and satisfactory. I know that the Yazoo Pass levee had been received; Kirkpatrick had told me so. He told me twice that it had been finished, and was all done and satisfactory; McCann also told me the same, and after each time Partee and Stansell were sent back to work on it again. He, Kirkpatrick, said he thought he would have a little more dirt put in on the sides. Kirkpatrick was up and down the line of levee continually. I frequently rode up and down the line with him, but was not with him any time when he received any of the work. On several occasions he expressed himself very well satisfied with
278 the work. I have heard Kirkpatrick say that the work at Shelby Ridge was finished and was all right. Have been with him at the Willow Lake and Flower Lake work after it was finished several times, and never heard him complain of that or any other part of the work.

Interrogatory 7. State in what manner the measurement of the work was made, and from what data.

Ans. In laying off the levee I measured the width and the height, and made notes and returned them to the chief engineer. No other measurement is made, but the calculation is made from these notes. All that is to be done is to run a test-level over the work and see that it is of the required height and width. That is the customary mode of measuring all embankments for said roads, levees, and the like.

Interrogatory 8. State what subcontractors worked under Partee and Stansell, and on what parts of the levee did they work.

Ans. At Flower Lake Fogarty & McGivney were subcontractors under Partee and Stansell, and they sublet part of the work to a man named Gillvoley; Kane and Kane were also subcontractors under Partee and Stansell of part of the Flower Lake; C. C. Wilburn also had a subcontract at the same place, and he was bought out by C. S. Kinsey and Co.
279 Partee and Stansell also did part of the work themselves. At Willow Lake part of the work was done in the fall and winter of 1871, by E. A. Lindsley & Co., or Taylor, Lindsley and Cage, under their own original contract, which they afterwards transferred to Partee and Stansell, who finished the work. Kane and Kane were also subcontractors on the repairs between Gordon Break and Delta, and filling a break between those points. Daly and Daly were subcontractors of the work at Port Royal. There were two Dalys there on

the work, Tom and Mike. I do not know in whose name the contract was; Mike went away and Tom finished the work. The work at Yazoo Pass, Gordon Break, and Shelby Ridge was done by Partee and Stansell themselves.

Interrogatory 9. State all you know about the measurement of any of the work of these subcontractors and the reception of it by the chief engineer or the levee board.

Ans. I had tested the work done by C. S. Kinsey & Co. at Flower Lake and found it fully completed according to specifications, and so reported it to the chief engineer. This was before I was sent back to test other parts of the work by Maj. Alcorn, as already stated. I am also satisfied that the work at Port Royal was likewise fully
280 completed according to the specifications. It was done under my observation, and I was frequently over it and observed it particularly. At one or two places I required Daly to put in some more dirt to make the work satisfactory.

Interrogatory 10. State all you know on the subject, making the partial of final estimate of the work done by Partee and Stansell.

Ans. I made monthly estimates of nearly all the work except that done at Yazoo Pass and Gordon Break and returned them to Kirkpatrick, the chief engineer. These estimates were made as the basis of monthly payments to be made to the contractors. I made an estimate of the work at Flora Lake after it was completed, but did not make any return of it, as it was not called for; and I have a recollection of the amounts. My recollection is that the work done by C. S. Kinsey & Co. amounted to about 107,000 yards; that done by C. C. Wilburn to about 6,000 yards; the work done by Kane & Kane & Partee and Stansell between Wilburn's and Fogarty's contracts amounted to about 51,000 yards; the work done by Fogarty and McGevney and Gillooley amounted to 90,000 yards. I have made all the preliminary estimates of this work for the information of the board. I made the particular estimates of the above specified work, because I had been sent
181 by Alcorn to run a test-level over it, and I thought it might be wanted. I know that Kirkpatrick made final estimates of several parts of the work. I was in his office several times when he was at work, and on one occasion asked him what he was about, and he replied that he was making out the final estimat's, and some were lying on his table, and he pointed to some in the pigeon.holes. I was spoken to by Maj. Alcorn about the estimates that had been made and returned by Kirkpatrick, and was asked by him what I knew about the quantities. Alcorn said he did not think they were right; thought they were excessive. At a meeting of the board I saw papers on the table which were spoken of by the members as being Kirkpatrick's final estimates, and think I had some of them in my hands, and saw some in the hands of Maj. Alcorn, but I do not remember any particulars or what particular work they related to. The papers alluded to related to the work done by Partee and Stansell.

Interrogatory 11. State all your knowledge concerning timber or brush being used in the foundation of the levee at Yazoo Pass and at Gordon Break, why it was put in and its effect on the stability of the levee.

282 Ans. There were cottón-wood poles and trees from 3 to 9 inches in diameter—some possibly a foot—thro'n into the hole at Gordon Break. There was a large hole filled with water there washed out when the crevasse occurred in the levee. The water in the hole was 500 feet deep, and perhaps deeper in some places, and was

about 5 to 10 feet across; the levee was built across it. I was going down the levee when I saw the hole filled up with the brush and trees. I spoke to the foreman and objected to them being put in, and said they ought to be taken out. He said it was done by order of Kirkpatrick. I went on to Friar's Point and reported the matter to Kirkpatrick. He told me he had ordered them put in. I told him that if they were put in I objected to the way they were put in, and he said he would have it changed. I saw him a few days afterwards, and he said he had had the way of putting in the poles and trees changed according to my suggestions. The work of putting in the poles, &c., was done openly and publicly, so that anybody passing could see it, and was exposed to observation for some time before the levee was at last built over it. The levee is still and is in good order; so far, the putting in the tim-
ber does not seem to have hurt it. It has stood the high waters
283 of every year since, as has also all the other work done by Partee and Stansell. I have been in the employ of the levee board as their engineer from about the 14 Dec., 1874, to Ap'l 6, 1875. I understood that poles and trees were also used in the foundation of the levee across the Yazoo Pass, but I did not see that. I told Kirkpatrick one day that I understood they were using fascines or poles and timbers in the levee at the pass, and he said yes, that they had concluded to have it done that way. I do not remember whether he said he had so concluded or that the board had done so. Dr. Dowd, when president of the board, with Kirkpatrick and myself, had discussed the matter previously at Friar's Point, and Dr. Dowd was in favor of having the foundation put in in that way to prevent the levee from settling so much. The levee at the pass has stood well ever since.

Interrogatory 12. Do you know anything about a remeasurement of the work of Partee and Stansell in the levees undertaken by B. Mickle as chief engineer of the levee board? If so, state all that you know or saw about that undertaking.

Ans. I saw Mr. Mickle measuring some of the work in the spring of
1872. Saw him at work on Willow Lake and on Flower Lake levees.
He was assisted by one person named Hewson, who was an en-
284 gineer, and another, whose name I forget, was acting as a rod-man and chain-man for Mickle and Hewson. Hewson run the instrument and made the observations. The rod-man held the rod. When Henson took sights he would call them out to Mickle, who put them down in his memorandum book. He did not examine to see that the observations were correct. He stood all the while on top of the levee. Hewson had the instrument set on the top and at the side of the levee, and the rod-man held the rod on the top and at the side and at the foot of the levee on both sides. The surface of the ground on both sides of the levee had in many places been raised above what it was when the work was laid off, on the inside by earth washed down from the sides of the levee, and on the outside by dirt deposited by scrapers in constructing the levees and by earth washed from the sides afterwards. The rod was set at stations 100 feet apart, and the observations were made at those stations on the top and at the sides and at the foot of the levee. I examined several places where the rod was put down at the foot of the levee, and know that it did not go down to the original surface of the ground. The ground was grown up thick with weeds two or three feet high, and I am satisfied that a man standing on the top of the levee could not tell whether the rod reached the surface or not.

I only went along with them once when they were on Willow
285 Lake levee, and then only while they were running ½ or ¾ths

of a mile of work. Mr. Stansell was with me. I saw them at work at other places, but was not along with them. When they began I offered them my notes of the original survey if they desired them, but Mickle said he did not want them; that he was going to measure only what he could see. This last remark was made during the conversation, but I cannot say that it was immediately following his refusal of my notes. His remark was general in regard to his whole measurement, that he intended to measure only what was in sight. Maj. Alcorn has told me that he had employed Hewson to measure a portion of the work before Mickle came. I was in the employ of the levee board at the time of the above measurement.

Interrogatory 13. State what would be an average day's work for a man with a wheelbarrow, a man with a two-horse wagon, and a man with a two-horse scraper on the work done by Partee and Stansell at Gordon Break, Yazoo Pass, and on the other work done by them. That is, how many yards of earth put in the levee would be an average day's work?

Ans. At the pass a man with a wheelbarrow ought to put in at least thirteen yards; if he worked well and long hours, eighteen yards. At Gordon Break a man with a wheelbarrow ought to have put in at
286 least 11 or 12 yards a day. I know the way the hands were worked whenever I was passing up and down, they ought to have done at least that much. On the repairs a man ought to have put in at least 8 yards. A man and wagon ought to have put in at Gordon Break and at the pass about fifty to sixty yards a day, the wagons to be loaded by other hands than the driver. A man and scraper would put in about 25 yards a day at the pass where the scrapers were used. In all these estimates I have estimated a day's work at ten hours.

Interrogatory 14. To what class of work would the work done at Gordon's Break, and between Gordon's Break and Yazoo Pass, and between Gordon's Break and Delta, belong, in comparison with the other work as to the cost of doing it?

Ans. It ought to be classed, in regard to cost and value of the work, with the work at the Yazoo Pass. Indeed, there would be more profit at the same price in doing the work at the pass and at the Gordon Break than in doing the repairs on the old levees.

Interrogatory 15. Can you state what was the condition of the ground over which the levees were built and repaired by Partee and Stansell as to timber and growth, and how many acres of land the work done required to be cleared?

287 Ans. A great deal of it was through timber, some of which was very heavy, and there was a great deal of cane and undergrowth. I estimate the clearing necessary to be done for the bed of the levee constructed or repaired by Partee and Stansell at about 80 to 90 acres, and the adjacent land necessary to be cleared for the purpose of obtaining the earth required for the construction of the levee at about 100 acres more; it might be more.

Interrogatory 16. Could Mickle have made anything like a correct estimate of the amount of work done by Partee and Stansell by measuring what was in sight at the time of his measurement; and, if not, why not?

Ans. He could not have made a correct estimate, because he could not see what in fact had been done. The hole at Gordon's Break was very large and deep, and my estimate was that there was as much dirt put in, that was entirely out of sight, as that which was visible. It was impossible for anybody to make a correct measurement of the work

without reference to the original notes of the work as laid out. At the Yazoo Pass the batture was very soft and boggy, and a large amount of the dirt put in must have sunk out of sight. On all the bayous that were built over, and there were several of them, about six, the
288 same difficulties existed, though not to so great an extent.

Interrogatory 17. At what time did Partee and Stansell finish their work on the levee?

Ans. I think it was some time in May, 1872, that they finally quit work.

(We except to so much of the foregoing deposition in chief as consists of what the witness says was stated to him by the foreman of Partee and Stansell, and by Kirkpatrick, and what he says he heard Dr. Dowd say about the use of logs in the levee, before Partee and Stansell had made their contract, as incompetent. We also except to the whole of the deposition of the witness as incompetent and irrelevant; reserving these exceptions in cross-exam'.)

X-int. 1. Did you continue to be in the employment of the levee board all the time up to April, 1875, after you begun?

Ans. No; I quit in June, 1872. I was first employed by the board in July, 1871, and remained as chief assistant engineer up to June, 1872. I then resigned. I was employed again as engineer in December, 1874, and continued in their employment up to April, 1875. During this last employment there has been no other engineer of the board except myself.

289 X-int. 2. Were you chief assistant engineer when B. Mickle was chief engineer of the board.

Ans. I was not in the employment of the board when Mickle was chief engineer.

X-int. 3. At the time you saw Mickle with Hewson and another person measuring work, how was Mickle employed; was he the chief engineer then?

Ans. As I understood it, Maj. Kirkpatrick was then still in office as chief engineer, and Maj. Mickle was employed as special engineer to measure the work.

X-int. 4. When you were sent by Maj. Alcorn to run the level, as stated in your direct examination, were you sent upon all the work, along the whole line, or to what part of it were you sent?

Ans. I was sent specially to the Flower Lake work, to the Gordon Breaks, and the work between the Gordon Break and the Yazoo Pass, and that was the work I did run over. The work between the pass and the Gordon Break and the Gordon Break itself had been run over before by Hewson, and he reported it to Maj. Alcorn as not being up
290 proper heights above high-water mark. I was sent specially at first to their part of the work to have it raised, and then I ran the test-level over it after it had been raised. I did run test-levels over the Willow Lake work, too. I do not remember by whom ordered to do it, but I presume I must have done it under Maj. Alcorn's direction.

X-int. 5. You speak, in answer to direct int. 10 of a particular estimate made by you of the Flow'r Lake work. How was this estimate made; that is, from what measurement, and when and why was it made?

Ans. The estimate was made wholly from the original notes of the work which I made when I was laying it off, and after test-levels had been run over it. I made this estimate in April or May, 1872. I made

it for the reason that I supposed I would be called upon for it by Maj. Alcorn.

X-int. 6. Where is that estimate now, and when did you last see it?

Ans. I don't think it is in existence now. It was never put in the form of a regular estimate; it was just in the rough. I only made the calculations of the amount without putting it into form. It may have been 12 mo's since I saw it. I think I destroyed it among some
291 other old papers that I didn't expect to have any use for.

X-int. 7. In stating the amount of that work, do you do so wholly from your recollection of that estimate; and how do you remember it so accurately?

Ans. I do it wholly from my recollection of that estimate. I have been called upon to give depositions or affidavits in behalf of Forgarty and Magevny vs. Partee and Stansell, and also other subcontractors under them, in suits about that work. I do not give the figures as being exact; they may vary a little one way or the other, but they are nearly according to my estimates.

X-int. 8. Where were the suits pending in which you have given your testimony?

Ans. Here in Memphis.

X-int. 9. Why did you make a particular estimate of that work and no other?

Ans. I may have made particular estimates of the Willow Lake and the Port Royal work also, but I don't recollect it now. I think now that Maj. Alcorn asked me to make an estimate of the Flower Lake work, but he did not call for it, and I never gave it to him.

292 X-int. 10. When did Maj. Mickle make the measurement as special engineer; where did he begin and where end?

Ans. I suppose it was in April or May, 1872, when I saw him on the Willow Lake work, as I have stated. He begun at the lower end and came up, ending, as I suppose, at upper end of the Flower Lake work.

X-int. 11. Where are the notes you took in laying off the work?

Ans. I don't know; they were made in memorandum books—I may have some of them now, I don't know.

X-int. 12. Were those notes not returned to the chief engineer? State what is the rule about such notes when taken by an assistant engineer, as to their ownership.

Ans. Maj. Kirkpatrick, then the chief engineer, had them all, and made copies of them, I suppose. He took them for that purpose, to be used in making his final estimates. Maj. Alcorn did have some of them, if not all of them. The rule is that such notes, when taken by an assistant engineer, belong to the chief engineer office.

293 X-int. 13. Will you state what was your objection to the mode in which logs and poles were being put into the Gordon Break, as you made it to Kirkpatrick?

Ans. My idea was that if put in at all they should be put in parallel or diagonally to the work, not at right angles as some of them were being put, and some of them were lying close to a rise or place not washed out, and were thus brought near the natural surface.

X-int. 14. How did you happen to be at the Willow Lake work when you saw Jno. J. Mickle measuring it?

Ans. I came over there from Helena. I don't remember whether I came accidentally or by design. I would have come if I had known he was there, for there was a good 'eal of talk at the time about the engineers who had been connected with the work, and as I had been one of

them, I wanted to see how the thing was going. If I had been as much interested as other parties, I would have been with them all the time.

X-int. 15. Were you then in the employment of the board?

Ans. I was.

294 X-int. 16. What were you then doing for the board, and how did you happen to come from Helena?

Ans. I think at that time the work was going on raising the Gordon Break levee and the Pass levee, and that I was supervising that work. My family was then living in Helena, where I had moved a month or two before.

X-int. 17. Was there or not considerable feeling caused among those connected with the work by Mickle's remeasurement?

Ans. I expect there was a good deal of feeling, not so much because of his measuring it, as because of the way in which he went at it. He began without saying anything to the engineers of the board, or at least to me, and without extending any professional courtesy, or courtesy such as, under the same circumstances, one gentleman would show to another.

X-int. 18. Did you sug'est to him at Willow Lake that the rod was not put upon the original surface?

Ans. I did not say anything ot him about at all, because I did not suppose he would pay any attention to it. I had offered him the

295 books and original notes, and he declined to accept them, saying he would not want them. He seemed to be distant in his manner. I never saw him before, that I recollect of.

X-int. 19. How do you make your estimates as to the clearing done by Partee and Stansell—from any memorandum?

Ans. I made it entirely from my recollection of the work and of where the timber began and where it ended.

X-int. 20. When did the trouble between Partee and Stansell and the board begin?

Ans. I couldn't say exactly. There had been more or less talk of it for some time, but I can't locate its beginning. I think I first knew of it as before the board. I think it was at a meeting held at the Peabody Hotel in the spring of 1872.

And further saith not.

W. P. FLYNN.

Sworn and subscribed this 6th of May, 1875, before me.

[SEAL.] HUNSDON CARY,

United States Commissioner, District of West Tennes'ee.

We waive notice and all formalities of certificate and of time and place, and consent to the reading of the above deposition

296 subject to the exceptions reserved, and all other objections to the competency and relevancy of the testimony.

May 6, 1875.

CRAFT AND LAMAR AND MAYES,
Sol'rs for D'f'd'ts.

Filed June 29, 1875. G. R. Hill, clerk.

And afterwards, to wit, on August 14, 1877, a bill of revivor was filed in this cause, in words and figures following, to wit:

U. S. OF AMERICA,
Northern District of Miss.:

District court of said district. In equity.

To the Honorable R. A. Hill, judge of said court.

Your orators, H. A. Partee and J. W. Stansell, respectfully show that heretofore they exhibited their bill of complaint in this honorable court against the Levee Board of Mississippi, District No. 1, and others, praying to be relieved, touching the matters therein contained. The said bill is now pending, being No. 197, on the rule-docket, having been answered by all the defendants and put at issue, and is ready for hearing. But your orators show that by an act of the legislature
297 of said State, approved April 11, 1876, the offices of commissioners, secretary, treasurer, and collector of said levee district No. 1, were abolished, and the auditor of public accounts and the treasurer of the State were constituted and appointed Levee Board of District No. 1, ex-officio, and substituted as such commissioners in place and stead of the said board of commissioners.

Your orators show that W. H. Gibbs is the auditor of public accounts, and W. L. Hemingway, the treasurer of the State of Miss., both of whom reside at Jackson, in the southern district of the said State, and are citizens of the State of Mississippi. Your orators pray that proper process may be issued to the marshall of the southern district to summon the siad Gibbs and Hemingway to appear at some convenient rule-day and make answer to this bill; and that the said suit may be revived against the said Gibbs as auditor and Hemingway as treasurer of said State as constituting the levee board of district No. 1, and that the same be proceeded with as though the original parties still remained in being, and they will ever pray, &c.

H. T. ELLET,
For Compl'n'ts.

Filed Aug. 14, 1877. G. R. Hill, clerk.

298 And afterwards, to wit, on the 14 day of August, 1877, the following subpœna was issued in this cause, to wit:

The President of the United States of America, to W. H. Gibbs, auditor of public accounts, and W. L. Hemingway, treasurer of the State of Mississippi, greeting:

For certain causes offered before us in our district for the northern district of Mississippi, sitting in chancery, we command you that, laying all other matters aside, and notwithstanding any excuse, you personally appear on the first Monday of September, 1877, at our district court in and for said district, sitting at rules in clerk's office, to be held at the town of Oxford, to answer to a bill of revivor exhibited against you as successor of the Levee Board of Miss., Dist. No. 1, by H. A. Partee and J. W. Stansell, complainants therein, and in a bill therein pending, wherein they are complainants, and the Levee Board of Miss., District No. 1, and others, are defendants in our said court, and further, to do and receive what our said court shall consider in this behalf. Herein fail not, as you will answer to the contrary at your peril.

Witness the Hon. Robert A. Hill, judge of the district court of the United States for the northern district of *of* Mississippi, at Ox-

299 ford, the first Monday of June, A. D. 1877, and 102 year of the Independence of the United States.

Issued 14th day of Aug. 1877.

[L. S.] G. R. HILL, *Clerk.*

MEMORANDUM.—The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of September, 1877, or the bill will be taken pro confesso against them.

G. R. HILL, *Clerk.*

To the marshall of the southern district of Miss., to execute and return.

G. R. HILL, *Clerk.*

Afterwar's return was made on the above writ in words and figure following, to wit.

Executed this writ on W. H. Gibbs, auditor of public accounts, on the 17th of August, 1877, and on W. L. Hemingway, treasurer, on the 18th of said month, by exhibiting it to each of them and by delivering unto each of them a true copy of the same.

J. L. LAKE, JR.
U. S. Marshal.

And afterwards, on Sept. 4th, 1877, the following appearance was entered in this cause, to wit:

300 *Appearance.*

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1., ET AL. } 197. Bill of revivor.

Cam' the defendants, W. H. Gibbs, auditor of public accounts, and W. L. Hemingway, treasurer of the State of Miss., in the bill of revivor filed in this cause by their attorneys, Lamar & Mayes, and enter their appearance herein, this Sept. 4, 1877.

G. R. HILL, *Clerk.*

And afterwards, to wit, on 22 Nov., 1877, an answer to above bill was filed in this cause in words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi:

District court of said district. In equity.

To the honorable Robert A. Hill, judge of said court, sitting in equity at Oxford:

The joint answer of W. H. Gibbs, auditor of public accounts, and of W. L. Hemingway, treasurer of the State of Mississippi, and ex officio the Levee Board of District No. 1, to the bill of revivor filed against them in the district court of the United States for the northern district of Mississippi, in equity, sitting in the case of Partee and
301 Stansell vs. Levee Board, District No. 1, by the complainants therein.

These respondents, reserving the benefit of all proper exceptions to said

bill of revivor and the original bill in said cause, for answer thereto, say, they admit the filing of the original bill in said cause, as charged by complainants in said bill of revivor, as well as the discription of said bill and the substance of it; and also they admit the answering thereof by the defendants thereto. Respondents also admit that by an act of the legislature of said State, approved April 11th, 1876, the offices in said bill of revivor named were abolished, and the auditor of public accounts and the treasurer of said State were constituted and appointed the Levee Board of District No. 1 ex officio, and substituted as such commissioners in place and stead of said board of commissioners.

Respondents admit that W. H. Gibbs is the auditor of public accounts, and W. L. Hemingway is the treasurer of said State, and that both reside and are citizens as stated.

Answering now to said original bill, these respondents say that they have no personal knowledge of the matters and things in said bill mentioned and detailed, but answer thereto on information and belief, and so answering they say that they do hereby adopt as their answer to said bill the answer thereto made by the original defendants
302 herein, and by them filed on the 3 day of April, 1873, and reiterate all its charges, statements, denials, and all other matters therein contained as fully as if set forth herein at large.

And now, having fully answered, defendants pray to be dismissed with their costs, &c.

LAMAR, MAYES AND BRANHAM,
Sol's for Def'ts.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before me, Archy McGehn, a commissioner of the United States district aforesaid, W. H. Gibbs and W. L. Hemingway, who, being each duly sworn, do say that such of the matters as are alleged in the foregoing answer as of their own knowledge are true, and such as are alleged on information and belief, they believe to be true.

Sworn to and subscribed before me on the 21 day of Nov., 1877.

A. McGEHN,
U. S Com'r.

Filed Nov. 22, 1877. G. R. Hill, clerk.

And afterwards, to wit, on the 17th day of June, 1878, the following answer to bill of revivor was filed in this cause, to wit:

303 UNITED STATES OF AMERICA,
Northern District of Mississippi:

District court of said district. In equity.

To the hon. Robert A. Hill, judge of said court, sitting in equity at Oxford:

The joint answer of Sulvester Gwyn, auditor of public accounts, and of W. L. Hemingway, treasurer of the State of Mississippi, and ex officio the Levee Board of District No. 1, to the bill of revivor filed against them in the district court of the United States for the northern district of Mississippi, in equity, sitting in the case of Partee and Stansell vs. Levee Board, District No. 1, by the complainants therein.

These respondents, reserving the benefit of all proper exceptions to said bill of revivor and the original bill in said cause, for answer

thereto, say, they admit the filing of the original bill in said cause, as alleged by complainants in said bill of revivor, as well as the description of said bill and the substance of it; and also they admit the answering thereof by the defendants thereto.

Respondents also admit that by an act of the legislature of said State, approved April 11th, 1876, the offices in said bill of revivor named were abolished, and the auditor of public accounts and the treasurer of said State were constituted and appointed the Levee
304 Board of District No. 1, ex officio, and substituted as such commissioners in the place and stead of said board of commissioners.

Respondents admit that Sylvester Gwyn was elected auditor of public accounts of said State on the day of November, 1877, and duly installed as such officer on the 1st day of January, 1878, and that W. L. Hemingway is the treasurer of said State, and that both reside and are citizens as stated.

Answering now to said original bill, these respondents say that they have no personal knowledge of the matters and things in said bill mentioned and detailed; but answer thereto on information and belief; and so answering, they say that they do hereby adopt as their answer to said bill the answer thereto made by the original defendants herein, and by them filed on the 3rd day of April, 1873, and reiterate all its charges, statements, denials, and all other matter therein contained as fully as if set forth herein at large.

And, in addition, say that said contracts of 28th of September, 1871, were ultra vires of the said board, and were a fraud on the said act of the legislature, in so far as they fixed the prices of said work at 45 and 65 cents per cubic yard, and at $45 per acre for clearing and grubbing. They were designed to defeat that clause of said act which prohibited said bonds to be discounted at a rate greater than 10 cents on the dollar; and respondents say that complainants have been
305 fully paid already, because said work was worth not more than 40c. per yard at Yazoo Pass, and 25 cents per yard at other places, and $25 for clearing and grubbing.

And now, having fully answered, defendants pray to be hence dismissed with their costs, &c.

LAMAR, MAYES & BRANHAM,
Sol's for Def'ts.

Filed this 17 day of June, 1878. G. R. Hill, clerk.

On the same day and date as above, to wit, the 17th day of June, 1878, a cross-bill was filed in this cause, in words and figures following, to wit:

UNITED STATES OF AMERICA.
Northern District of Mississippi:

In the district court of United States sitting in equity to the June term, 1878.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISSISSIPPI, DISTRICT NO. 1, and others.

To the Honorable Robert A. Hill, judge of said district court of the United States for the northern district of Mississippi, sitting in equity at Oxford:

The cross-bill of Wm. L. Hemingway, treasurer, and Sylvester Gwyn,

auditor of public accounts of the State of Mississippi,
306 and ex officio composing the Levee Board of Mississippi, District No. 1, and citizens of said district, exhibited against Jeptha W. Stansell, surviving partner of Partee and Stansell, citizens of the State of Arkansas.

Humbly complaining, sheweth unto your honor that heretofore, to wit, on the 17th day of May, 1871, an act of the legislature of the State of Mississippi was passed, whereby was created a body politic and corporate, to be called by the name and style of "The Levee Board of the State of Mississippi, District No. one," to be composed of five members, called levee commissioners, one from each of the counties of Tunica, Coahoma, De Soto, Panola, and Talahatchie, to be chosen by the boards of supervisors respectively; and they charge that shortly after passage of said act, said board was duly organized by the appointment of one A. S. Dowd, from the county of Coahoma, John McCann, from the county of Tunica, T. S. Tate, from the county of De Soto, William W. Howe, from the county of Panola, and one Hawkins from the county of Tallahatchie.

Your orators state that by said act said board was invested with full power to construct, repair, and maintain a levee along the Mississippi River from the State of Louisiana to the southern boundary of said county of Coahoma, and to rebuild, strengthen, and elevate the
307 old levee, or parts thereof, so as effectually to protect and reclaim the lands in said district designated by said act from overflow by the waters of said river, and to make all needful rules and regulations, and to do all acts they might deem necessary to carry into effect the objects and purposes of said act, with power especially given to let out such work or parts thereof, and cause the same to be done by contract or otherwise as they might deem proper. To provide the necessary means to build said levee, and to carry out the objects and purposes of said act, a uniform charge and assessment of two per centum per annum, for twelve successive years, on the value of every acre of improved and unimproved land, and of cultivated land, in said levee district, was thereby fixed, levied, and made, to continue and be collected in each and every year for the said period of twelve years. And the said board was further authorized to borrow money, and to that end to issue bonds to the amount of one million of dollars, payable in not less than two nor more than ten years after the 1st day of January, 1871, to bear interest not exceeding eight per centum per annum, with coupons attached; which bonds were authorized to be sold and negotiated in any market, in or out of the State, on the best terms that could be obtained for the same; but it was also expressly provided by
308 said act, that in no case should any of said bonds be negotiated or sold at a greater discount than ten per cent.

And your orators show that the said levee board, in pursuance of the powers conferred by said act, proceeded to advertise for bids of contractors for performing the work required to accomplish the objects of said act, and that defendants, on the 27th day of September, 1871, did propose in writing to the said board and offer to contract for the levee work to be let in the said district on the following terms, to wit, for work to be done at the Yazoo Pass, at the rate of sixty-five cents per cubic yard (meaning yard of embankment, your orators suppose), and for work to be done at Delta, Flower Lake, Shelby Ridge, and Port Royal at the rate of forty-five cents per cubic yard; all clearing to be paid for at the rate of thirty dollars per acre, and grubbing at the rate of fifteen dollars per acre, and did thereby propose and agree to receive in payment for said

work the bonds of said board issued under said act, running from January 1st, 1873, to January 1st, 1881.

Your orators further states that said proposition of defendants was accepted by said board on the same day; and that a written contract was accordingly drawn up purporting to be by and between said defendants, as parties of the first part, and said levee board as parties of the
309 second part, which writing bears date the 28th day of September, 1871, and thereby defendants, in consideration of the payments and covenants therein mentioned to be made and performed by said levee commissioners, did covenant and agree to construct and finish in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of said board, all the graduations and such other work as might be required on the Flower Lake levee in Tunica County, Mississippi, also the Yazoo Pass levee in Coahoma County, Mississippi; also the Shelby Ridge, Port Royal, and Delta levees in Coahoma County, Mississippi. The said work to be finished as described in certain specifications thereby referred to*o*, and agreeably to the directions from time to time of said engineer, and on or before certain times therein mentioned. And said writing further imported that the said board did agree to pay said defendant for such work, in bonds of said board, the sum of sixty-five cents per cubic yard for the Yazoo Pass levee, and forty-five cents per cubic yard for all the other levees named, all estimates to be made monthly, and bonds to be issued in accordance with the estimates when made. Said contract contained other provisions not necessary to allude to here. Said writing was executed by defendants; but does not appear to have been ever executed by said board or by any one *one* professing to act for it.

310 Whilst protesting their ignorance of whether said writing is the true contract and against being considered to admit the same generally in this cause; yet for the purposes of their cross-bill your orators are willing to receive the same as correct. Said writing, in its original, is filed as Exhibit 3 to the answer of defendants to the original bill herein, and a copy of said specifications is filed as part of Exhibit 1 to the same pleading, and are hereby referred to and prayed to be taken as a part hereof.

Your orators further state similar propositions were made by one E. A. Lindsley to said board for the works on Willow Lake levee, in Coahoma County, and that on the said 28th September, 1871, a writing exactly similar, in fact a copy of it in all essential particulars save one, was drawn up and signed by said Lindsley, but not signed by said board or any one professing to act for it. Said writing is in exactly the attitude of that just above described, and your orators make the same protest in reference to it, and receive it for the same purpose. The particular in which it differs from the writing signed by defendants is that the provision in regard to price to be paid for work is forty-five cents per cubic yard in bonds, or twenty-seven cents in cash. A
311 copy thereof is filed as Exhibit 4 to the answer above mentioned, and is hereby referred to and prayed to be taken as part thereof.

Your orators further state that for some cause, to them unknown, said Lindsley abandoned his contract, or rather it was by him transferred to defendants, and defendants accepted said transfer and claimed to be substituted to all the rights and liabilities thereunder of said Lindsley.

Your orators now state that, acting under and in furtherance of said alleged contracts, defendants entered upon the construction of said levees and other works, and in the course thereof they did, and on the

conclusion of their work had done, labor to the amounts *and* following, to wit:

Flower Lake levee	235,183 c. y'ds.		
Willow Lake levee	169,954 " "		
Shelby Ridge levee	197,928 " "		
Port Royal levee	36,651 " "		
Gordon Break levee	13,876 " "		
2nd break below pass	8,467 " "		
Repairs between pass & Delta	10,300 " "		
Hole at Gordon's Break	23,261 " "	—total, 695,620 c. y'ds.	
Yazoo Pass levee		54,932 "	
Clearing and grubbing		95 acres.	

Your orators state that the foregoing are the official returns made to said board by B. Mickle, who was the chief engineer of said board, and ascertained the quantities by actual measurement; said Mickle being in all respects a capable and reliable engineer. That according to said estimate, and according to the terms of the contracts
312 hereinbefore alluded to and described, defendants should have received for said work pay as follows, to wit:

For 695,620 c. yards, @ 45c. per y'd, in bonds	$313,029 00
For 54,932 c. y'ds, @ 65c. per y'd, in bonds	35,705 80
For 95 acres grubbing and clearing, @ $45 p'r a., in bonds	4,275 00
Total	353,009 80

Your orators now state that the said defendants were, in point of fact, at various times, paid by said board in bonds as aforesaid, the sum of three hundred and eight'-seven thousand eight hundred dollars, making an over-payment of fifty-four thousand sevin hundred and ninety $\frac{20}{100}$ dollars.

Proceeding on the hypothesis that said contracts as made were valid (and of that your orators will speak hereafter), your orators state that the foregoing is the true condition of the account between said defendants and said board, but these defendants pretend that they did work, and demand payment therefor as follows, to wit:

	C. y'ds.	C. y'ds.
Flower Lake levee and sinkage, c. y'ds	266,500	
Willow Lake levee and sinkage "	201,000	
Shelby Ridge levee and sinkage "	225,000	
Port Royal levee "	44,800	—737,300
Yazoo Pass and sinkage "	116,000	
Gordon Break "	51,000	
Second break below pass "	35,000	
Repairs old levee between Y. Pass and De'ta	15,000	—217,000
Clearing and grubbing		200 acres.

Defendants thus estimate said 737,300 y'ds, at 45c.	$331,785 00
And said 217,000 c'b y'ds, at 65c. per yard	141,050 00
And said grubbing and clearing, 200 acres, @ 45 per acre	9,000 00
Making a total grand indeed of	$481,835 00

313 The said $387,800.00 of bonds paid defendant they claim should be discounted at 10 per centum; which doing they claim a ballance due them from said board of $132,815.00 in money, $146,096.00 in bonds.

Your orators state that said ballance is purely fanciful. There are three grave errors in it, as follows: 1st. All the work done at Gordon's Break, the 2nd break below the pass, the repairs on the old levee between Yazoo Pass and Delta, amounting to 100,000 cubic yards, as defendants count it, is classed as Yazoo Pass work and charged at 65c. p'r cubic yard instead of 45c. per yard as it should be. Your orators state that nothing except the Yazoo Pass levee, strictly limited to the Yazoo Pass, is to be estimated as a part of the Yazoo Pass levee. There is no ground for any other claim. The Yazoo Pass levee means just that and nothing more.

2nd. The quantities claimed by defendants, they claim to have obtained from one Kirkpatrick, who, for awhile, was chief engineer of said board. Your orators do not know whether this be true; but if true, the amounts vary greatly from the official returns of Kirkpatrick to the said board. In those returns, Kirkpatrick estimated the work at Flower Lake as 247,445 y'ds, not 266,500; that at Willow Lake as 210,172 y'ds, not 225,000; that at Port Royal as 44,821 y'ds, not 44,800. Repairs on the old levee between the pass and Delta, at 10,728 y'ds, not 15,000. Moreover, your orators state that the estimates themselves made by Kirkpatrick were flagrantly and strikingly erroneous; and all-
314 way erroneous against said board and in favor of the defendant. Your orators charge that they were false and fraudulent and utterly unreliable. Said Kirkpatrick presented his field-notes along with his estimate of the Yazoo Pass levee to Milton S. Alcorn, the president of said board; and though said Alcorn was not an engineer, he found that those notes would *notes would* not sustain the estimates. He told Kirkpatrick so, who then agreed to refer the notes and calculations to Minor Meriwether, a distinguished civil engineer, who pronounced the estimates clearly erroneous and not sustained by the notes. Kirkpatrick, without the knowledge of the board, withdrew his notes and estimates, and they have never since been accessible to either said board or your orators. Further, at a meeting of the board held in Austin, in September, 1872, said board understood the defendants to say that Kirkpatrick had never measured the Yazoo Pass levee, nor any of the between Yazoo Pass and Delta; and your orators now call on defendants to answer whether they did not so state, and whether they did so state or not; if it be not the truth. But however this may be, the estimates of Kirkpatrick are wholly wrong and fraudulent; and the true measurements are those hereinbefore given by your orators.

3rd. Defendants are not entitled to a discount of 10 per cent. on the bonds. The contract with Lindsley provides the method of payment; it contains no mention of discount; and complainants in the original bill (who are these) defendants expressly plant themselves on
315 the posi' that they were substituted to Lindsley, under his contract and took it with all privileges and liabilities. It is true that the writings signed by defendants, and hereinbefore described, does contain an interlineation to the effect that the bonds shall be paid to the defendants at the rate of ninety cents on the dollar; but the true history of that interlineation is as follows: On the said 28th September, 1871, the said Dowd was president of said board; very shortly afterwards said Dowd departed this life. The said writing was originally made and signed did not contain the 10 per cent. clause or anything equivo-

lent thereto, but simply provided that defendants were to be paid said 45c. and 65c. respectively, in bonds. Long after the execution of said writing, and after Dowd's death, defendants went before said board and claimed that a verbal agreement outside of the written contract had been made between them and said Dowd; that the bonds should be received at 90 cents on the dollar; and on this representation the board agreed that the bonds should be so paid, and the secretary of the board interlined in the contract a writing, the words "at the rate of 90 cts. on the dollar," said act of said and of said board, if the board had any part in it, was therefore nugatory; because it was without consideration, and because it was ultra vires.

Your orators now state all during the year 1872 a controversy was going on between these defendants and said board, these de-
316 fendants claiming of said board the extravagant and unfounded bal/ance herein mentioned, and the board correctly claiming that defendants were already overpaid. This controversy resulted in the filing by these defendants of their orginal bill in this cause on the 23d day of Feb'uary, 1873, against said board as a body politic, and against members thereof individually; which original bill was duly and fully answered on the 2nd day of April following. Said original bill and answer raise many questions purely defensive, and not necessary or proper to advert to here. The foregoing facts are all that are necessary to be here noticed. Said cause is still depending and undetermined.

Your orators further state that, by an act of the legislature of the State of Mississippi, approved Apr. 11th, 1876, the offices of commissioner, secretary, treasurer, and collector of said levee, district No. 1, were abolished, and the auditor of public accounts and the treasurer of said State were constituted and appointed ex-officio the levee board of district No. 1. By said act said treasurer was established as bearing toward the said levee fund the same relation that he does to the State fund; and it is declared that the auditor shall act as auditor to that fund, and that the existing rules, regulations, and accounts as to the State funds shall apply, as far as practicable, to said levee fund. It was further provided, that the secretary and treasurer of said board, and all commissioners, collectors, and others, having any money,
317 bonds, coupons, or assets belonging to said board, should turn the same over to said State treasurer, and that said auditor and treasurer should have full power to settle up, under the laws then in force, the unfinished business of said levee, district No. 1. The effect of said act was to substitute said auditor and treasurer in their official capacity in the stead of said levee board. At the time of the approval of said act your orator, Hemingway, was treasurer of said State, and he still is such; and on the day of November last your orator Gwynn was elected auditor of public accounts of said State; was installed in said office on the 1st day of January, and still is such.

Your orators have stated the case so far on the assumption that the said contracts of 28th September, 1871, were valid; but in truth, they were, so far as the prices agreed to be paid for said work was concerned, invalid and improper. The said board were trustees, administering a great public trust and acting under purely statutory powers, They had no other powers whatsoever—the only authority which they had use, or to issue bonds, was derived from said act of March 17th, 1871, and by the provisions of that act they were expressly forbidden to sell or negotiate said bonds at a discount of more than ten cents on the dollar. And while the terms of pa'ment fixed by said contracts of 28th September, 1871, pretended to take said bonds at par, and while

said writing signed by defendants on said day and as altered by
318 said secretary as aforesaid, pretends to fix the discount at 10 per centum only, yet all that, your orators aver, was a mere subterfuge. Said contracts of 28th September, 1871, in so far as they fixed the rates to be paid for said work at 65c. per cubic yard for the Yazoo Pass levee, and 45c. per cubic yard for all other levees, and $45 per acre for clearing and grubbing were mere expedients, designed and adopted by said defendants and said Lindsley to avoid and defeat that 10 per cent. discount feature of said act. Said work was not worth more than twenty-five cents per cubic yard, except perhaps, the Yazoo Pass work, which may have been worth as much as forty cents; and said clearing and grubbing were not worth more than $25 per acre. In the very contract for Willow Lake levee made by Lindsley, and which defendants assumed and undertook, and under which they did one-third of their 45c. work, it is expressly agreed by Lindsley to do the work for 45c. per yard in bonds, or for 27c. in cash (meaning currency). And in the year 1872, these very defendants contracted with the Vicksburg and Nashville Railroad Company to build the embankment for that road for the rates of thirty-five cents per cubic yard, and of that thirty-five cents, a large proportion was to be paid in county-aid bonds; that, too, in a region where the soil is harder and more difficult to work than is the soft alluvium of the Mississippi bottom, wherefore your orators say that said defendants
319 and Lindsley and said board did unlawfully and in flagrant violation of the intention of said act and of the rights of the taxpayers of said levee district, and in fraud of the provisions of said act, fix such extravagant rates as are hereinbefore described, whereby the discount on said bonds is made to be not 10 per centum as by said act is allowed and intended, but nearly fifty per centum. It was clearly the intention of said act that said bonds should be negotiated in the great money markets, and either sold or money borrowed on them as collateral; and that with such money thus obtained the work was to be done at cash prices. It was not an unpromising scheme; such bonds were sold in the markets at 90 cents on the dollar, and especially at that time when all the capital of the world was tending that way. But if not practicable, any other was forbidden by the act itself. It may be that the power to borrow money, &c., as conferred, carried with it the power to pay the contractors for work directly in bonds; but, if so, always provided that it be fairly and bona fide done; and the evident intent of the act to get for the property-holders of the district 90c. worth of work for $1 in bonds, cannot be defeated by a mere piece of legerdemain in drafting a contract.

Your orators, therefore, state that defendants have been paid largely more than their work was worth and than they should have been paid; that said agreement as to prices was a fraud on said act, and the people of said district, and void.

320 They state further that the true amount that said defendants should have received in bonds for said work so done by them, is as follows, to wit:

Flower Lake levee, Willow Lake levee, Shelby Ridge levee, Port Royal levee, Gordon Break, second break below Yazoo Pass, repairs on old levee between the pass and Delta, hole at Gordon's Break as hereinbefore shown, 695,620 cubic yards at 25c. per yard, making the sum of $173,905.00; also, Yazoo Pass levee, as before shown, 54,932 cubic yards, at 40c. per yard, making the sum of $21,972.80; also, 95 acres of clearing and grubbing, at $25 per acre, making $2,375.00; in all a total of $198,252.80, payable in bonds. Defendants, however, have re-

ceived the sum of $387,800.00 in bonds, being an *access* over the true amount of no less than $189,547.00, or about one-fifth of the whole amount authorised to be issued. Your orators deem it necessary to *to* comment on this transaction.

The premises considered, your orators pray that said Partee and Stansell be made parties defendant hereto, and be required to answer this cross-bill under oath, proper process having been first served; and that an account be taken of the true amount an' value of said work, and that a final hearing hereof said defendants be required to return to your orators the said excess of bonds so paid them by said board, and in default of such return that your orators have a money judg-
321 ment said defendant for the value of said bonds as of the date of the delivery to defendants and the interest thereon, or, if mistaken in this, for such other further and general relief as your honor may deem meet and proper. And your orators will ever pray, &c.

LAMAR, MAYES AND BRANHAM,
Sols. for Compl'ts.

Filed June 17th, 1878. G. R. Hill, clerk.

And afterwards, to wit, on the 19th of Oct., 1878, an answer to foregoing cross-bill was filed in this cause, in words and figures following, to wit:

District court of U. S. for the northern district of Miss. In equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1, et al. } No. 197.

The answer of J. W. Stansell, who has survived H. A. Partee, to the cross-bill of W. L. Hemingway, treasurer, and S. Gwyn, auditor, etc., composing the levee board of district No. 1.

Respondent, for answer to said cross-bill, says it is true the legislature of Mississippi passed an act of the tenor set out in said
322 cross-bill, for the terms and provisions of which he refers. He admits the appointment and organization of the levee board. The advertisement for bids and the offer of Partee and Stansell in writing to do the work at the prices named, payable in the bonds of the board, at ninety cents in the dollar. Respondent refers to the bid of Partee and Stansell already made an exhibit in this cause by the said *by the said* board for the terms of this bid. He admits that said bid was accepted and a contract drawn and signed accordingly, which is made an exhibit to the answer of said board, under and in pursuance of which all the work mentioned and contemplated thereby was performed. If the same was not signed by said board, it was their own wrongful omission. The agreement was not executed in duplical', and the original, after being signed by Partee and Stansell, was kept by the board, and respondents supposed they had signed it, as they ought to have done, and did not know to the contrary until it was filed by them as an exhibit in this cause.

Respondent states that the bid of Lindsley, or Taylor, Lindsley and Cage, was like that of Partee and Stansell, payable in bonds at ninety cents in the dollar, but in drawing the contract that condition was omitted on the suggestion of members of the board that it was not nec-

essary to be inserted, the same being well understood by all parties, and the same was not afterwards interlined, as in the contract of Partee
323 and Stansell. The board had no money and could not sell the bonds, and therefore elected to pay in bonds, and did pay said Lindsley in bonds, at ninety cents in the dollar, for such of the work as was done by him; but said Lindsley, not being able to perform his contract, the said Partee and Stansell took his contract off his hands, took the bonds that he had received and paid him for them in cash, and performed the remainder of the work, with the understanding that they would receive pay in bonds at 90 per cent.

Respondent says that Partee and Stansell did proceed under said contracts to perform, and did perform in a skilful and satisfactory manner, all the work contemplated by said contracts, and also additional and extra work, as stated in their original bill. He denies that the amount of said work is truly stated in said cross-bill. He denies that B. Mickle was the chief engineer of said board while any of said work was done, measured, or accepted. He denies that the pretended returns of said Mickle are official returns made by him to said board as chief engineer. If he was a capable engineer he denies that he was reliable.

On the contrary, respondent says that during the whole progress of the work, and until after the same was completed and accepted, W. R. Kirkpatrick was the chief engineer of the said board, and invested by the board with full power to measure, estimate, and accept the
324 work, and that the contractors were absolutely bound, as was said board, by his estimates *by his estimates*, measurements, and other acts as such engineer. Respondent states that the said Kirkpatrick, as such engineer, officially returned to the said board that said Partee and Stansell had performed the following amount of work, to wit:

Sinkage.		
5,000	Flower Lake, cubic yards	261,500
11,000	Willow Lake, "	150,000
5,000	Shelby Ridge, "	220,000
	Port Royal	44,800
	Yazoo Pass proper	96,000
20,000	Gordon Break, part of Y. Pass	51,000
	Part of Y. Pass, Gordon B., to Delta	35,000
41,000	Cubic y'ds	898,300
	Sinkage	41,000
	Total cubic yards	939,300
	Extra work	15,000
	Total	954,300

These returns contained no estimates for sinkage or clearing so far as respondent knows. The amounts above stated in the margin for sinkage are correct. Neither respondent nor Partee, so far as he knows, ever saw these returns after they were made to the board. They requested Kirkpatrick to give them a copy which he promised, but did not. But he gave out the figures to said Partee and to respondent separately, and they were taken down by both of them in writing at the time. Respondent only took down the round

325 numbers. He only knows what passed between Partee and Kirkpatrick by information derived from said Partee. He states that when the proper allowance for sinkage and clearing is added, the total amounts to 737,000 cubic yards to be paid for at 45 cts., and 217,000 cubic yards of Yazoo Pass work to be paid for at 65 cents, and 200 acres of clearing and grubbing at $45 per acre, the total amounts due said Partee and Stansell, including sinkage and clearing and extra work, the amount paid to them and the balance remaining due and unpaid are fully stated in the original bill, and respondent refers to the same as his answer to this part of the cross-bill without repeating the same at length.

Respondent states that Partee and Stansell wer' obliged to settle, and did settle with their employees and sub-contractors, according to the returns of said Kirkpatrick, the estimates being made monthly and furnished to them for that purpose, and they, the said P. and S., being bound by the contract to accept said estimates and returns as true. But after the work was all done and accepted, and these settlements made, the said board concluded that they would not abide by these estimates and returns. So they employed B. Mickle as a special engineer to make a new and different estimate of the work, and said Mickle having in view the prospect of succeeding Kirkpatrick as chief engineer, in case he should reduce the estimates of Kirkpatrick sufficiently to
326 please his employers, is alleged, how truly respondent does not know, to have made the returns ascribed to him in said cross-bill, and therein falsely called his official returns as chief engineer, and was speedily thereafter awarded for his services by made chief engineer in the place of Kirkpatrick, removed.

Respondent denies that nothing except the Yazoo Pass levee, strictly limited to the Yazoo Pass, is to be estimated as a part of the Yazoo Pass levee as contemplated in the said contract. On the contrary, he states that all the work from Delta to and including the pass, as cut by the Federal forces during the war, was included under that designation, and was so understood by all parties when the contract was made. There was no at all for this work from Delta to pass, except under the designation of Yazoo Pass," and yet two of the worst breaks, to wit, Gordon's and the 2nd break below the pass, were between Delta and the pass, and the entire levee between these points required to be cleared off and raised. Without this work the rest of the work would have been useless. Besides the old Yazoo Pass proper, actually ran along and nearly parallel to the levee, the whole distance from Delta to the pass, as at present located, and had always formed and been known as the Yazoo Pass levee. This levee was badly broken at the break built by Kann's and Gordon's Break, and these fills, with the clearing and raising the old levee, was more difficult and expensive to the con-
327 tractors than the mere filling of the pass where the levee crossed it. The "Yazoo Pass levee," includes the whole of it, just that and nothing more, and it was because so included that the work was done by Partee and Stansell. Any other supposition imputes to the levee board the folly of not undertaking to fill these breaks or to raise this levee and thus to make all their expenditures useless and unavailing for the protection of the county from overflow.

Respondent does not believe that the returns made by Kirkpatrick to the board differed from the figures given by him to said Partee and to respondent, which were given out by him from the papers prepared by him to be submitted to the board and given out at the table in the room where the board met a few minutes later to receive th e n. Neither

Partee nor respondent were ever afterwards permitted to see these estimates as returned. They have often demanded to see the originals or to be furnished with a copy, but have always been put off, on some frivolous pretext. They demanded their production in their original bill, and this demand was evaded.

The complainants in this cross-bill now profess to state the contents of these returns, with entire accuracy in the smallest details, from which it is to be inferred that they have possession of the originals. If so, respondents hopes they will produce them, and shew what they do contain. He does not believe that Kirkpatrick withdrew them, but
328 does believe that the original commissioners secreted them, as they never denied having them when respondent and Partee demanded a sight or a copy of them.

Respondent has no means of knowing whether Kirkpatrick's estimates or calculations were correct. He was selected for the purpose by the board, and intrusted by them with the duty, and they required Partee and Stansell to abide by whatever he did or said as final and conclusive. They were forced to accept his estimates as correct as between themselves and their subordinates, and his errors, if he made any, cannot now be corrected to the prejudice of respondent.

Respondent denies that he or said Partee, at a meeting of the board at Austin in September, 1872, or that he at any other time, or said Partee, so far as he knows or believes, said that Kirkpatrick had never measured the Yazoo Pass levee, nor any of the work between Yazoo Pass and Delta. On the contrary, the truth is that said Kirkpatrick did measure the pass and the breaks at Gordon's, and that built by Kanns, to ascertain how much dirt it would take to fill them, and did set the stakes for the contractors to work by. This is all the measurement ever made of such work; and, from the notes of such measurement, the necessary calculations are made, and nothing remains to be done but to see that the work has been performed according to the stakes, and to make the proper allowance for sinkage. After
329 these openings had been filled Partee and Stansell were required to raise and repair the rest of the levee between the pass and Delta. There had been no previous measurement of this work, and no line of levels or stakes set to work by. Respondents applied to members of the board and to Kirkpatrick to get this done, as otherwise he would not tell when it would be satisfactory, but failed, and therefore performed the work according to his own judgement. When it was done Kirkpatrick examined the work, accepted it, and made an estimate of the quantity of work, and returned it to the board, but did not make any actual measurement of with instruments. This was not the fault of the contractors, as they could not control Kirkpatrick. As to this particular work, respondent may have told the board at Austin in Sept. 1872, that Kirkpatrick had not measured it, but he has no recollection of doing so. Afterwards the board caused Flynn, their assistant engineer, to examine this part of the levee, and he required that part of it between the pass and Gordon's Break, about ⅗ths of a mile, to be further raised. He ran a line of levels, set stakes on it, and Partee and Stansell completed the work according to such measurement, but no estimate of it was ever made or returned, and no allowance was ever made for it to the contractors. This is part of the extra work for which they claim compensation, and they have tried to prove the amount of it by witnesses as to the days, work, &c., as they best could.

330 Respondent, further answering, says that he and said Partee are and were entitled to the discount of 10 per cent. on the

bonds. Such was the agreement and understanding from the beginning. In the bid of Partee and Stansell for the contract it was expressly stipulated that they would take the bonds at ninety cents in the dollar, and that bid was accepted without modification. In drawing the contract that condition was inadvertently omitted. Said Partee & Stansell objected to the omission, and insisted on its being inserted. Dowd, one of the commissioners, said it was unnecessary for it to be specified in the contract, as the law itself fixed that. It was understood and agreed by the whole board that such was the effect of the contract. After the death of Dowd said Partee and Stansell became satisfied that he had been mistaken about the law, and fearing that some misunderstanding might arise they applied to the board to correct the contract according to the actual agreement, to which the board readily assented, and the correction was made in the presence and by authority of the board by its secretary.

The bid of Lindsley was precisely like that of Partee & Stansell in this respect, and the same understanding was had with him that the bonds were to be taken by him at 90 cents in the dollar. The contract of Lindsley was not assigned to Partee and Stansell, but an arrangement was made verbally with the board that Partee and Stan-
331 sell should take the contract for that work the same as if it *it* had been contained in their own original contract, and at the same rates. The payments that have been made on account of that part of the work were made by the board in bonds at 90 cents in the dollar.

Respondents denies that the agreement to receive said bonds at the price of 90 cents in the dollar is unlawful. He denies that it was a subterfuge or expedient to evade or defeat the limitation on the power of the levee board to dispose of the bonds at a greater discount than ten per cent. He says that the said levee board advertised for bids for the work contracted for by Partee and Stansell, and that the contract would be let to the lowest responsible bidder. The said Partee and Stansell bid for said work, fixing the prices at figures which they expected would yield them a handsome profit, without which they had no inducement to engage in the business, and they proposed to receive the bonds of the board in payment, at the rate of 90 cents in the dollar.

In making their bid they entered into competition with all others, and if any person could have been found willing and able to undertake the work for a lower price, or on better terms, either for cash or payable in bonds, the contract would not have been awarded to them. The work was very heavy and was necessary to be done promptly, and in a careful and skillful manner, in order to protect the country from impending overflow. Respondent insists that the question
332 whether they could have afforded to do the work for less is wholly irrelevant and immaterial. They were interested to get as large a price, and to make as large a profit, as they could, and they did not undertake to put the work at the lowest figure at which it could be done. They named a price at which they were willing to undertake it, with the chances of profit which their prices afforded, and they were not willing to undertake it for less.

The levee board were quite as good judges of the value of the work as Partee and Stansell were, and better, and they had the option to award the contract to whom they pleased or to withhold it altogether. He says that only men who had control of capital and credit could undertake such a contract for so large a job of work, to be commenced immediately and completed in so short a time. Large outlays of money

were required to be made at once in purchasing the necessary outfit of mules, wagons, ploughs, whe'lbarrows, scrapers, shovels, axes, provisions, &c, in procuring and transporting laborers, and providing for them shelter and sustenance, paying wages of laborers and other employees, before any return could be expected. To do this, besides their own means, money had to be promptly raised at hight interest, and the personal services and attention of both of them constantly given to the business.

By their skill, close attention, and credit they were able to sublet small portions of the work to other parties at prices, payable in
333 cash, much lower than the prices which they were to receive, but they were obliged to supply these subcontractors, and to give their own personal supervision to the work, and to stand responsible to the board for its prompt and skillful performance. What they make or saved by these means was by their own management, skill, and personal labor and attention, and by the employment of their own capital and credit.

Respondent denies that the cash prices paid by them to such subcontractors and laborers form any criterion of what Partee and Stansell ought to have demanded or would have consented to receive for the work they undertook. But in fact adding thereto a reasonable compensation for their own time and labor, for the use of their capital and credit, for the cost of raising money, and for the risk and responsibility they assumed (all of which they took into consideration in fixing their prices and making their proposition), such prices would have afforded a very small margin of profit.

And, if the amount they are entitled to recover depends upon the actual profit they made, then respondent says that the whole transaction was disastrous and resulted in heavy loss, notwithstanding the most carefull and prudent management, and involved both himself and said Partee in insolvency, and the bonds of said board have long since ceased to have any considerable pecuniary value.

334 Respondent states that the prices fixed by said and himself were the prices at which they were willing to take the contract for money, and they offered to receive the payment in bonds at ten per cent. discount, because they hoped to be able to negotiate them to advantage in order to raise money to continue and carry on the work, a hope that was wholly disappointed.

The said levee board accepted their bid, and contracted to pay the price they demanded; and respondent denies that the contract price can now be varied by proving that it did not cost them so much to do some of the work as the board had contracted to pay them.

Respondent denies that the said contract to receive payment in bonds at 90 cents was made as a contrivance to evade the provisions of the act under which the board was acting, or with the understanding that it would have that effect.

And respondent further says that if in making said contract the said levee board in any manner exceeded its powers (which he altogether denies), yet having induced said Partee and Stansell to enter into said contract, and to perform the work in pursuance of it, and having thereby received and enjoyed the full benefit of the contract in all respects, and having secured the country from overflow, the said board are now estopped from aver'ing their want of power to make said contract, but, having received the consideration and enjoyed its benefits, they are obliged to perform their part of the agreement; and

that the complainants in said cross-bill are in like manner
335 estopped.

And, finally, if the special contract is to be set aside as invalid for any reason, and if Partee and Stansell are to be compensated according to the cash value of the work at the time, then respondent says that no responsible contractor could have undertaken the work at the time for less than 45 cents per cubic yard for the work at the pass and between there and Delta, nor for less 30 cents for the other work, payable monthly, in cash, as the work progressed. At this rate the work done would have been worth the sum of $325,840.00, as follows, to wit:

217,000 y'ds, at 45 c'ts	$97,650 00
737,300 " " 30 "	221,190 00
Clearing 200 acres, say $35	7,000 00
	$325,840 00

The payments, made in the bonds of the board, were not cash. They were not money. Partee and Stansell agreed to receive them at 90 cents as cash upon their contract, but not on any other basis. If the contract is thrown aside then they are charg'able only with the cash value of what they got. Such bonds are regarded as chattels whose value is what they will bring in the market. These bonds were never worth ninety cents; on the contrary the best price that could be obtained for the first $200,000.00 of bonds received by Partee and Stansell was 65 cents, and they were sold at that price, producing the sum of $130,000.00. The other bond' received by them,
336 amounting to $187,800.00, were sold at various prices from 40 cents down to 25 cents, averaging about 32½ cents, and produced about $60,096.00, making in a credit of about $195,296.00, and leaving a balance due respondent, as survivor of said Partee, of about $129,744.10, with interest. The bonds of said board are now worth not more than 20 cents in the dollar. Respondent states that the matters of the said cross-bill are fully put in issue by the original bill and the answer thereto, except as to one or two points; and respondent, for further answer, reiterates and adopts all the statements of the original bill, so far as the same relate' to, or are explanatory of, any of the matters contained in the said cross-bill, and make the same a part of this answer, as if the same were herein repeated. And, having fully answered, respondent prays that said cross-bill may be dismissed, and that he may have all the relief prayed in the original bill, and all such other relief as may be equitable.

H. T. ELLETT,
Sol. and Counsellor of Respondent.

J. W. Stansell, the above respondent, being sworn, says that the facts stated in the foregoing answer, so far as they are stated as of his own knowledge, are true, and so far as they are stated upon the information of others, he believes them to be true.

JEPTH W. STANSELL.

Sworn to and subscribed this 12th day of September, 1878, before the undersigned.

W. B. SMITH,
U. S. C. C. Com'r.

Filed Oct. 19th, 1878. G. R. Hill, clerk.

337 And afterwards, to wit, on the 19th day of October, A. D. 1878, complainants' replication to answer to cross-bill was filed in said cause in the words following, to wit:

Replication to answer to cross-bill.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

District court of the United States, to the December term, 1879.

PARTEE AND STANSELL.
vs.
LEVEE BOARD OF DISTRICT NO. 1. } No. 197.

The replication of W. L. Hemingway, treasurer, and of Sylvester Gwynne, auditor of public accounts, of the State of Mississippi, to the answer of J. W. Stansell, to their cross-bill hereto filed herein.

These repliants, saving and reserving, &c., for replication to said answer to said cross-bill, say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray as in and by their said cross-bill they have already prayed.

LAMAR, MAYES AND BRANHAM,
Compl't's Sol'rs.

Filed 19th October, 1878. G. R. Hill, clerk.

338 And afterwards, to wit, on the 3rd day of December, the same being a day of the December term of said court, A. D. 1878, the following order was made in said cause, to wit:

Continuance.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DIST. NO. 1, ET AL. } No. 197.

It is ordered by the court in this cause that the same be continued until the next term of this court.

Finding of the court.

PARTEE AND STANSELL
vs.
LEVEE BOARD. } No. 197.

The facts found by the court in this cause are fully stated in the opinion of the court upon the hearing of the cause upon its merits,

which opinion is annexed to the record, and to which reference is made without herein restating them.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 18th day of June, the same being a day of the June term of said court, A. D. 1879, an interlocutory decree was made and entered in said cause, in the following words, to wit:

United States dist. court for the northern dist. of Miss'i. Equity.

339 *Interlocutory decree.*

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISSI., District No. 1. } No. 197.

This cause coming on to be heard at final hearing on the bill, answer, replication, cross-bill, answer, and replication, exhibits, depositions, and proofs, and the death of the complainant H. A. Partee, having been suggested and proved, and the cause revived in the name of J. W. Stansell, as surviving partner, and the cause having been argued by counsel and duly considered by the court, and it appearing to the satisfaction of the court that the complainant, J. W. Stansell, surviving partner as aforesaid, is entitled to recover of and from the defendant, The Levee Board of Mississippi, District Number One, the amount, if any, due the said Partee and Stansell for work done in building levees in said district, in the years 1871 and 1872, under and by virtue of the contract bearing date the 28th day of September, A. D. 1871, which is filed as Exhibit A to the bill of complaint, after deducting such payments as have been received by them thereon: It is therefore ordered, adjudged and decreed, that it be referred to Samuel Lane, as a master and commissioner, to ascertain and report from the pleadings, exhibits, depositions, and proofs on file, what amount, if any, remains
340 due an' unpaid to said Stansell as surviving partner as aforesaid, upon and for the said work performed in building levees under said contract, giving proper credits for all payments that have been made, and in taking said account, the said commissioner shall take as the basis of his calculations the estimates of said work made by W. R. Kirkpatrick, the chief engineer of said levee board, as proved in the said cause, that he shall not, mak*ing* any additional allowance for sinkage, it not sufficiently appearing that sinkage was not included in said estimates. And in reference to the work done on Willow Lake levee, under the original contract awarded to Lindsley, or Taylor, Lindsley and Cage, the said commissioner shall not make any allowance of ten per cent. discount on the bonds which were to be paid on that part of the work. And it is further ordered, adjudged and decreed, that the said commissioner ascertain and report what expenses, if any, of the arbitration commenced and abandoned as stated in the pleadings and proof, and that the amount thereof be allowed to complainants in his report.

R. A. HILL, *Judge.*

This June 18th, 1878.

341 And afterwards, to wit, on the 18th day of June, the same being a day of the regular June term of said court, A. D. 1879, said commissioner's report was made and entered in said cause, in the words and figures following, to wit:

Commissioner's report.

U. S. district court for the northern dist. of Miss. Equity.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS., DISTRICT NO. 1. } No. 197.

The undersigned commissioner, to whom it was referred to ascertain and report the amount due to complainants in the above cause, reports that he has been attended and assisted by the counsel of both parties, and having duly considered the matters of the reference, submits the following as his conclusions:

ESTIMATE OF AMOUNT OF WORK DONE.

Taking the estimates of the engineer, Kirkpatrick, as reported by him to H. A. Partee, the total amount of work done is as follows:

	Cubic yards.	
Shelby Ridge	220,171.74	
Port Royal	44,820.53	
Willow Lake	190,107.03	
Gordon Break	51,000	
Flower Lake	257,343	
Kain and Kain	28,000	
Repairs	10,728	
Cubic yards	802,170.30, at 45 cents.	

342 Yazoo Pass, 96,000 cubic yards, at 65 cents.

802,170.30 cubic yards, at 45 cents		$360,976 63
96,000 " " " 65 "		62,400 00
		$423,376 63
200 acres grubbing and clearing, at $45.00		9,000 00
Total work		$432,376 63
Arbitration expenses		1,200
Total		$433,576 63

Payments on work.

PAYMENTS.

$71,000 bonds at par, Willow Lake work	$71,000	
$316,800 bonds, at 90 cts	285,120	
Total credits		$356,120 00
Bal. due June, 1872		$77,456 63
Int. 7 years, at 6%		32,531 78
		$109,988 41

The undersigned found the arbitration expenses, referred to in the decree, to $1,200, which is included in the above estimate. All of which is respectfully submitted. June 18th, 1879.

S. C. LANE,
Commissioner.

Amount of decree.

Amended by order of court deducting	$38,364 74
Amount of decree	$71,623 67

Filed June 18th, 1879. G. R. Hill, clerk.

343 On the same day and date, to wit, on the 18th day of June, 1879, exceptions to commissioner's report was filed in said cause, by defendants, in the words following, to wit:

Exceptions to com'r's report.

District court of the United States, at the June term, 1879.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

PARTEE AND STANSELL
vs.
LEVEE BOARD, DISTRICT NO. 1.

The objections of defendants to the account herein this day stated by Samuel C. Lane, master.

Said defendants object to said account, as stated, for the reason that the $77,456.63 stated by said account to be due complainants was payable (except $1,200 thereof) on said day June, 1872, in levee bonds as follows: $\frac{1}{60}$ thereof in said bonds at par, and the remaining $\frac{49}{60}$ in said bonds at the rate of 90c. on the dollar; and that said comm'r should have stated said account on the basis of the cash market value of said bonds at that time. Wherefore objectors pray that the said $77,456.63 (less $1,200) be reduced to bonds as above stated; and that this account be based on their said market value. And they will ever pray.

MAYES, *Sol.*

Filed June 18th, 1879. G. R. Hill, clerk.

344 Afterwards, to wit, on the 19th day of June, the same being a day of the regular June term of said court, A. D. 1879, a final decree was made and entered in said cause, in the words and figures following, to wit:

Final decree.

District court of said district. Equity.

UNITED STATES OF AMERICA,
Northern Dist. of Mississippi:

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISS. DISTRICT NO. 1. } No. 197.

This cause again coming on to be heard, and it appearing that Samuel Lane, the commissioner to whom it was referred to ascertain the amount due the complainant, J. W. Stansell, surviving partner of Partee and Stansell, having made his report, whereby it is shown that there is due to said complainant the sum of one hundred and nine thousand nine hundred and eighty-eight dollars and forty-one cents, and the exceptions of the said defendant to the said report being heard and considered by the court, it is ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, sustained, and that the amount due complainant be estimated at the cash value of the bonds in June, 1872, instead of the par value, and it appearing to the
345 satisfaction of the court, by consent of both parties, by their counsel, that the cash value of said bonds in June, 1872, when they ought to have been delivered, was sixty-five cents in the dollar, it is ordered that the said report be corrected accordingly, and a reference to make said correction being waived, and counsel on both sides agreeing that, estimating said bonds at sixty five cents in the dollar, the amount due complainant is seventy-one thousand, six hundred and twenty-three dollars and sixty-seven cents ($71,623.67) instead of $109,988.41, as shewn by said report, the said report is amended accordingly, and as amended, is confirmed.

$71,623.67.

And the court does further order, adjudge, and decree that the said Levee Board of Mississippi District No. 1 do pay to said J. W. Stansell, surviving partner of said firm of Partee and Stansell, the said sum of seventy-one thousand six hundred and twenty-three dollars and sixty-seven cents, with interest from the date of this decree, together with the costs of this suit, to be taxed, and that execution may issue therefor.

And it further decreed that the cross-bill in this cause be dismissed.

Ordered and decreed this June 19th, 1879.

R. A. HILL, *Judge.*

Filed and ent. June 19th, 1879, M. 8, p'g. 503. G. R. Hill, clerk.

346 And afterwards, to wit, on the 1st day of August, A. D. 1879, a fi. fa. was issued in said cause, in the words and figures following to wit:

No. 16. To December term, 1879.

J. W. STANSELL, SURVIVING PART., &C.,
vs.
LEVEE BOARD OF MISSISSIPPI DISTRICT No. 1. } No. 197. Fi. fa.

19th JUNE, 1879.

Judgment	$71,623 67
Clerk	117 35
Attorney	37 50
Marshal	50 70
Depositions	7 00

Int. 6 per cent.

H. T. ELLETT, *Attorney.*

Bill of costs.

Clerk's costs	117 35
Attorney's tax-fee	37 50
Deposition fees	7 00
Marshal's fees	50 70
	$212 55

Fi. fa.

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you that of the goods and chattels, lands and tenements of defendant, The Levee Board of Mississippi District No. 1, late of your district, you cause to be made the sum of seventy-
347 one thousand six hundred and twenty-three dollars and sixty-seven cents, which J. W. Stansell, surviving partner of the firm of Partee and Stansell, lately in the district court of the United States for the northern district of Mississippi, has recovered against them for his damages which he sustained by reason of the non performance of a certain promise and assumption by said defendants to the said plaintiff made, with interest on the said sum at six per centum per annum, from the 19th day of June, 1879, until paid; also the sum of two hundred and twelve dollars and 55 cents for his costs by him about his suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judge of the district court of the United States for the northern district of Mississippi, at Oxford, on the first Monday in December next, to render to the said plaintiff for his damages and costs aforesaid, and have then there this writ.

Witness the Hon. Robert A. Hill, judge of the district court of the United States for the district of Mississippi, at Oxford, the first Monday of June, A. D. 1879, and 103 year of the Independence of the United States. Issued the 1st day of August, A. D. 1879.

{ UNTED STATES DISTRICT COURT, NORTHERN DIST. MISS. SEAL OF COURT. }

G. R. HILL, *Clerk.*

348 Upon said fi. fa. the marshal made, on the 1st day of December, A. D. 1879, the following return, viz:

No property found. Dec. 1st, 1879.

J. L. MORPHIS, *U. S. M.*,
By B. P. SCRUGGS, *D. M.*

And afterwards, to wit, on the 3rd day of February, A. D. 1880, a petition for mandamus was filed in said cause, in the words following, to wit:

Petition for mandamus.

UNITED STATES OF AMERICA:

To the honorable R. A. Hill, judge of the district court of the northern district of Mississippi.

The petition of Jeptha W. Stansell respectfully shews that as surviving partner of the firm of Partee and Stansell he recovered a judgment in the said district court for the sum of $71,623.67 dollars, on the 19th day of June, 1879; that this judgment was rendered on a claim for work done in the construction and repair of levees under a contract made with the Levee Board of Mississippi District No. 1, a district created by an act of the legislature of the State of Mississippi, approved 17th March, 1871, which said board was created a corporation by that act, with power to make contracts for the construction
349 and repair of levees of the said district, and with power to sue and capacity to be sued. Petitioner further shows that in order that contractors for levee work might have assurance of payment, the legislature, by sec. 8 of the said act of 1871, made the expense of construction and repair of the levees of the said district, a charge upon the lands of the district, so as to give to the contractors for levee work a charge on the lands, as petitioners are advised, which should continue until the cost of the levee work should be fully paid, and in order to the due apportionment of the said charge, the legislature made it take the form of an annual ad valorem tax, and made a valuation of the lands of the district aforesaid, discriminating between improved and wild lands, and cleared and fenced lands not cultivated and those in actual cultivation, and on this valuation a tax of two per cent. ad valorem was levied, to continue for twelve years.

Petitioner further states that the said board was empowered to borrow money and issue negotiable bonds as a resource for the payment of contractors for work, and by a provision of the act the bonds negotiated were to be preferred in payment from the tax to all other demands; but it was sufficiently apparent to the legislature, from an exhibit which the tax-payers of the district made to the legislature,
350 that the proposed tax would yield a sum exceeding $150,000.00 per annum, and petitioner believes and affirms that the annual tax levied would, if it had been fairly and honestly paid, have made a fund sufficient to pay the cost of construction and repair of the levees of the said district.

Petitioner further states that the work done by the said Partee and Stansell was completed in 1872, but the said board contested the claim, and petitioner instituted a suit in the said district court in order to have the claim judicially settled, and after a baffling litigation of six or seven years, petitioner recovered his judgment aforesaid, and on making demand of the existing board of the said district, to wit, the auditor and treasurer of the State of Mississippi, they refused to pay any part of the judgment, saying that the annual tax as collected was insufficient to pay the interest and principal of the bonds issued by the said levee board.

Petitioner further states that from the very outset the tax-payers of the district have failed to pay the tax on their lands as rated, and by various devices have eluded the provisions of the law, and have, in point of fact, as a general rule paid only about one-half of the annual charge on their lands by an unfair and unfaithful exhibit of their
351 lands, according to the classification fixed by law.

Petitioner further states that the present representatives of the district, to wit, the auditor and treasurer of the State of Mississippi, refuse to take any steps to collect the tax assessed by the act aforesaid; that is to say, they refuse to take any measures to collect from recusant tax-payers the amounts for which they are liable for the annual tax running through the whole period from 1871 down to the present year; and petitioner believes, and so states, that in order to a just settlement of the charge placed upon the lands, as before stated, it will be necessary that commissioners shall be appointed by the court, or judge, as prescribed in section 10 of the said act, who shall be charged to collect back taxes, or unpaid taxes, from which the lands assessed have not been discharged; that the duty of making the investigation cannot be discharged efficiently otherwise than by an officer of court, protected by its authority and governed by its instructions.

Petitioners therefore ask a remedy, that the judgment of the said court may not be in vain. There is nothing tangible to be reached by ordinary process on said judgment, and for the reasons assigned there are no funds in the hands of the present levee board with which to pay
352 petitioner's debt.

Petitioner therefore prays the honorable judge of the district court aforesaid to employ the powers granted in the act aforesaid as the only means by which he can get satisfaction of his said judgment, and prays that proper notice be ordered by the honorable judge to be served on the said auditor and treasurer to show cause against the prayer of petitioner, if any they have, on such day as to the judge may seem proper.

J. W. STANSELL.
By W. P. HARRIS, *Sol.*

Filed Feb. 3rd, 1880. G. R. Hill, clerk.

On the same day and date, to wit, on the 3rd day of February, A. D. 1880, an order was made in said cause in the words and figures following, to wit:

J. W. STANSELL, SURVIVING PARTNER, &C.,
vs.
S. GWINN AND W. L. HEMINGWAY, AUDITOR and treasurer, &c. } No. 197.

It is ordered in the foregoing case that S. Gwinn, auditor of public accounts of the State of Mississippi, and W. L. Hemingway, treasurer of said State, appeared before me in the United States court-room in the city of Jackson on 7th day of this month, and show cause, if
353 any they have, why the prayer of the foregoing petition shall not be granted. It is further ordered that said auditor and treasurer shall be served with a copy of said petition and this order three days before the day above fixed for the hearing of said application.

Ordered this February 3rd, 1880.

R. A. HILL, *Judge*, &c.

Filed Feb'y 3rd, 1880. G. R. Hill, clerk.

Ex. to petition.

The following is the exhibit to the foregoing petition of J. W. Stansell, filed in said cause on the 3rd day of February, 1880:

District court of the United States, northern district of Mississippi.

PARTEE AND STANSELL
vs.
LEVEE BOARD OF MISSISSIPPI, DISTRICT NO. 1. } Abstract of decree.

Decree, June 19th, 1879, for $71,623.67.
Interest 6 per cent.
Costs, $213.05.

I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the above is a true and correct abstract of a decree of said court in favor of J.
354 W. Stansell, surviving partner of the firm of Partee and Stansell, and against the Levee Board of Mississippi, District No. 1, and that said decree is wholly unpaid and unsatisfied, as appears from the records of said court.

Given under my hand and the seal of said court, at Oxford, the 19th day of January, 1880.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF MISS. SEAL

G. R. HILL,
Clerk.

Filed Feb. 3rd, 1880. G. R. Hill, clerk.

Afterwards, to wit, on the 7th day of February, A. D. 1880 the answer to the foregoing petition was filed in said cause, in the words following, to wit:

Answer to petitioner.

In the district court of the United States, to the term, 1880.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

To the Hon. Robert A. Hill, judge of said district court, sitting in equity:

The answer of Wm. L. Hemingway, treasurer, and of Sylvester Gwinn, auditor, of the State of Mississippi, and ex-officio Board of Levee Commissioners for District No. 1, to the petition of Jeptha Stansell herein exhibited against them on the 3rd day of February, 1880, answering, says: They admit the organization of said levee board, and the recovery of the judgment against it by petitioner, as stated in said petition, and also the provisions of the said act of 17th March,
355 1871, as stated in said petition. They deny that they have refused to take steps to collect from recusant taxpayers the taxes assessed by said act, if by that assertion in said petition it is meant that they had failed or refused to collect such taxes as they were officially certified by the proper officers were collectable and due; and they say further that the statutes conferred on them no authority to revise or correct the assessment rolls handed them from those sources.

They state further that from information recently obtained they have cause to believe it to be true that large amounts of taxes assessed by said acts have not been properly rendered, and have consequently not been collected. If that be true, they are equally desirous with peti-

tioner for the collection of such unpaid taxes, and submit that matter to the orders of the court.

Further, they state that they are making arrangements to appeal from said judgment to the Supreme Court of the United States, to effect, if they can, a reversal thereof; and they object to the payment of said moneys to the petitioner until that question is determined, but ask the court to make such orders for the safe-keeping of the fund in litigation, when collected, as may be proper. And now, having fully answered, they pray to be hence dismissed, &c.

LAMAR, MAYES AND BRANHAM, *Sol'rs.*

Filed Feb'y 7th, 1880. G. R. Hill, clerk.

356 And, to wit, on the 7th day of February, A. D. 1880, a decree was made and entered in said cause in the words and figures following, to wit:

Decree for mandamus and com'rs.

Before the honorable R. H. Hill, judge of the district court of the United States, for the northern district of Mississippi, sitting at chambers in Jackson, on the seventh day of February, A. D. 1880.

JEPTHA W. STANSELL, SURVIVING PARTNER of the firm of Partee and Stansell, complainant and petitioner, *against* S. GWINN AND W. L. HEMINGWAY, AUDITOR and treasurer of the State of Mississippi, district No. 1, defendants.	Petition for mandamus and commissioners, &c.

Be it remembered that this cause came on this day to be heard upon the petition, answer, proof, and exhibits, and his honor, the judge, being of opinion that the petitioner is entitled to the relief prayed in so far as hereinafter allowed, doth consider, order, adjudge, and decree as follows:

1. That the said defendants, as Commissioners of Levee Board of the State of Mississippi, District No. 1, and commissioners of this court, be, and they are hereby, ordered and compelled to have collected and paid over the charges and assessments created and levied by the provisions of an act entitled "An act to redeem and protect from overflow from the river Mississippi certain bottom-lands herein described,"
357 approved March 17th, 1871, and heretofore unascertained and unpaid by the tax-payers within said levee district No. 1 as organized by said act, and in manner provided by said act, except as hereinafter directed.

2. That in order to ascertain the amount of back charges and assessments levied by said act upon the lands lying within the limits of said district which now remain due and unpaid, the said defendants, as levee commissioners of said board and commissioners of this court, be, and they are, authorized, required, and compelled to appoint within each county included in said levee district a levee-tax assessor and collector, who shall enter into bond, with security and in the penalty prescribed by them and payable to them, and conditioned that they will well and truly assess and collect the charges and assessments levied by said act, and whose duty it shall be to assess and collect the said charges and assessments in the time and manner required by

law. Said assessors and collectors shall visit all resident holders and owners or persons in possession of lands in said district and demand a statement under oath setting forth the number of acres which they respectively own and occupy, and the number owned and occupied during each year from and including the year eighteen hundred and seventy-one up to the present year, and on which they are chargeable under said act, the number of acres cleared and uncleared, the number under fence, and the number under cultivation during each of said years;
358 and shall make a tabulated statement thereof as given in, unless they are satisfied that the statement so given in be incorrect, in which event they may make such changes therein as the facts warrant, notifying the parties respectively of the change, so that they may have opportunity for contesting the same before the defendants and this court in his cause. In case such owners or occupants fail to file with said assessors said statements the party shall be chargeable as required by said act, and the assessment shall be made by said assessors according to the facts. Said assessors shall complete and forward said tabulated statement, and the statements of parties aforesaid, under oath, to the defendants, as levee commissioners and commissioners of this court, on or before the first day of September next, and the said defendants shall thereupon place upon the face of said lists the amount of taxes due and owing upon said lands, the amount actually paid, and the balance remaining to be paid, including the tax of the current year, and shall, without delay, forward fair copies of said completed lists to the several assessors and collectors of taxes appointed by them under this order. Immediately upon the receipt of such completed lists said collectors shall forwith proceed to collect all back taxes, and in case of default shall coerce payment thereof in the manner required by law. Said defendants shall, as far as practicable, appoint the sheriffs of the counties within the said levee district No. 1 as assessors and collectors of
359 said levee taxes under this order if they are willing to give the bond required, and undertake the duty prescribed by this order.

3. That thesaid defendants, as levee commissioners and commissioners of this court, shall require payment in cash by the land-owners, within said levee district No. 1, of fifty per cent. of said back taxes, and fifteen per cent. of the total back taxes due, in addition, to pay the costs of assessment and collection, and of executing this order, and the costs of this cause and of the preparation of assessment lists, &c.; the balance of said back taxes may be collected in the bonds and coupons heretofore issued by levee board, district No. 1.

4. That the said defendants be, and they are hereby, required and compelled to procure and forward to the assessors and collectors appointed by them, tabulated assessment lists, and printed statements for land-owners, &c., as required by this order, the costs of which may be paid out of any moneys hereafter collected by them under this order, and to use all despatch in the discharge of their duties under this decree and order. They will make report of their proceedings under this decree from time to time, and may ask, at any time, the interposition of this court in all cases in which any obstruction may be placed by parties in the way of a fair execution of this decree and order.

5. That any person conceiving himself aggrieved by the action
360 of said commissioners may by petition to this court present his grievence, and obtain such redress as he may be fairly entitled to.

5. That in all cases in which lands are wild, and the owners thereof are not known, said assessors may assess the same to unknown owners, and when the same facts exist as to cleared lands, and there is no one

in possession thereof to make the written statement under oath above called for, said assessors shall ascertain the necessary facts in the premises, and make the assessment to unknown owners.

7. That said commissioners in all cases of serious doubt as to the amount due by any lands in said district No. 1, or the owners thereof, may compound with the parties and accept such sum as may be reasonable from such owners, subject to the approval of this court. They shall prepare a form for tabulated assessments, and submit the same for approval to the solicitor of defendants or to this court, if there be any objection thereto, and shall hold the money collected by them, under this decree, subject to the order of the court.

8. That the papers in this cause be returned by the clerk of the district court for the southern district to the clerk of this court at Oxford and filed, and that he, thereupon, issue a certified copy of this decree to defendants, and the mandatory injunction directed to and commanding them, forwith and with due dispatch, to carry this order and decree into execution.

9. That the assessors and collectors under this decree shall be
361 allowed seven per cent. in currency of the amount assessed and collected by them, the commissioners five per cent. in currency of the amount received and disbursed by them under this decree, and the residue of said fifteen per cent. shall be held by said commissioners for the payment of costs, &c.

10. That the service to be performed under this decree by the said commissioners shall not be so construed as to require them or either of them to incur any charge or expense which cannot be by them provided for to be paid out of the proceeds of the fund herein directed to be collected, or is not provided for by the petitioner herein; and in no event are they to be required to incur any personal cost or liability, or to impose any charge or liability on any funds in their hands, or to be in their hands, in their official capacity, other than the fund already herein indicated.

11. That no lands held by the State, or the liquidatory levee board, exempt from taxation under the provisions of said act of March 17th, 1871, shall be included in the tabulated assessment lists required by this decree, but all such lands shall be exempt from taxation and tabulation under this decree.

Ordered, adjudged, and decreed this 7th day of February, A. D. 1880.

R. A. HILL, *Judge*, &c.

Filed Feb'y 7th, 1880, and ent. in order book 1, p'ges 62, 63, 64, and 65. G. R. Hill, clerk.

362 Afterwards, to wit, on the 9th day of February, A. D. 1880, a writ of mandamus was sued out and issued in said cause, in the words and figures following, to wit:

No. 197. *Writ of mandamus.*

The President of the United States to W. L. Hemingway, treasurer, and S. Gwinn, auditor of the State of Mississippi, and commissioners of the district court of the United States for the northern district of Mississippi, and to the marshall of the southern district of Mississippi, greeting:

Whereas in our district court of the United States for said district, on the 7th day of February, A. D. 1880, in a certain cause in said court

wherein Jeptha W. Stansell, surviving partner of the late firm of Partee and Stansell, is complainant and petitioner, and S. Gwinn and W. L. Hemingway, auditor and treasurer of the State of Mississippi, ex-officio Levee Board of the State of Mississippi, District No. 1, are defendants, a decree was rendered, and a duly-certified copy of said decree has been furnished you, the said defendants, as therein required, wherein and whereby you, the said defendants, were directed to speedily do, and cause to be done, certain things in said decree fully set forth.

You, the said defendants, are therefore hereby by us commanded that you forthwith and with due dispatch carry said order and decree into execution fully in all respects as required by said decrees, and that this writ be returned to the clerk of the district court for
363 the northern district of Miss. on or before the 1st Monday of June next, with the service thereof endorsed hereon.

Witness the Hon. R. A. Hill, judge of said court, and the seal thereof, at Oxford, in said district, date aforesaid.

Issued February 9th, A. D. 1880.

{ UNITED STATES DISTRICT COURT } G. R. HILL,
{ NORTHERN DIST. OF MISS. SEAL. } *Clerk.*

We acknowledge service on the within Feb. 18th, 1880.

WM. L. HEMINGWAY.
S. GWINN.

Certificate of record.

UNITED STATES OF AMERICA,
Northern District of Miss., ss:

I, Geo. R. Hill, clerk of the district court of the United States for said district, hereby certify that the foregoing three hundred & sixty-four pages of manuscript contain a true & perfect transcript of all papers, decrees, orders, &c., had or filed in said court in the case of Partee & Stansell vs. Levee Board of Miss., Dist., No. 1, et al., as fully & as completely as the same now appear on the files and of record in said court.

In testimony whereof I hereunto set my hand and affix the seal of said court, at my office, in Oxford, in said district, on this the 14th day of September, A. D. 1880.

[SEAL.] G. R. HILL, *Clerk.*

364–'5 *Petition for appeal.*

LEVEE BOARD OF MISS., DISTRICT NO. 1, & OTHERS, appellants,
vs.
PARTEE AND STANSELL, APPELLEES. } No. 197.

To the honorable the Supreme Court of the United States:

The appeal of William L. Hemingway, treasurer of the State of Mississippi, and Sylvester Gwinn, auditor of said State, and ex officio the Levee Board of Mississippi, District Number One, appellants in this cause, respectfully showeth:

That on the 23rd day of February, 1873, the above-named complainants, Hiram A. Partee and Jeptha W. Stansell, filed their bill in the district court of the United States for the northern district of Mississippi against the Levee Board of the State of Mississippi, District No.

1, and against Milton S. Alcorn, John McCann, Robert Cocke, William W. Howe, and Jeremiah Robinson, as members of said levee board, alleging that the said levee board was a corporation created by the legislature of said State by an act approved May 17th, 1871, to consist of five members, called levee commissioners; one for each of the counties of Tunica, Coahoma, De Soto, Panola, and Tallahatchie, to be chosen by the boards of supervisors of said counties respectively.

That said board was given full power to construct, repair, and maintain a levee along the Mississippi River, from the south boundary of said county of Coahoma to the State of Tennessee, and to strengthen and elevate the old levee so as to protect the lands in said district
366 from overflow, and to cause said work to be done by contract; that for the purposes of such work a tax was levied on the lands in the district for the period of twelve years; that the board was also authorized to borrow money and issue bonds to the amount of one million of dollars, and upon certain conditions to sell and negotiate them; that in pursuance of their power, the board advertised for bids of contractors to perform the work required, and that on the 27th day of September, 1871, complainants proposed in writing to the board an offer to contract for the work to be done in said district upon certain terms specified in the bill, and to recieve payment in the bonds of said board at the rate of ten per cent. discount, the board being limited to that rate of discount in disposing of the bonds issued; that their bid was accepted, and a written contract entered into on 28th day of September, 1871, between complainants and the board. The bill then sets forth the work to be done, and the prices to be paid according to the contract, and the time within which it was to be finished, and also states that the work was to be done according to the specifications, and to the satisfaction and acceptance of the chief engineer of the board, and in a substantial and workmanlike manner, said work to be estimated by said engineer, the board to pay what he found to be due, and complainants to give to the board a release under seal from all demands, it being agreed that his decision should be final, both parties waiving all right of suit, action, or remedy at law, or other
367 wise. Bill also states that a similar contract to perform certain other work in the district was entered into between the board and E. A. Lindsley, and by him transferred to complainants, and they accepted by the board as contractors in the place of Lindsley, and given all his rights, etc. The bill then states the performance on the part of complainants of their part of the contract, according to the specifications, directions, and to the satisfaction of the chief engineer, and the work was accepted by him; that he made monthly estimates of the same, and when the work was completed he made a final estimate of the same, and delivered it to the board. It also states that, according to such monthly estimates, the board paid complainants in bonds as agreed, four-fifths of the stipulated price of the work done. Bill also mentions other work done by direction of engineer, which was received by the board, but not included in the chief engineer's estimates, because not completed when the estimate was made out. Relying upon these monthly and final estimates, complainants settled with their subcontractors. Said final estimate does not include amounts due complainants for grubbing and sinking, and bill states amounts due for these items. The whole amount claimed by complainants to have been due them for all work done was $481,835.00, upon which board paid bonds, which, at ninety cents on the dollar, amounted to $270,900, leaving due $210,935. This balance the board

refused to pay, because of alleged errors in the engineer's esti-
368 mates, and required further labor of complainants, which work, to avoid trouble, complainants performed. In the mean time the chief engineer who made the estimates left the board, and another engineer had been employed in his stead, who made out estimates claimed in the bill to be false, largely below those of his predecessor. By these last estimates a balance was due, but the board refused to pay it unless the complainants would give the board their written release in full of all demands. After urgent remonstrations this release was given, complainants having been forced to give it by the necessities of their subcontractors, who were poor, and they had no other means of raising money to pay them except the bonds they should receive from the board. Bill claims that the said release was void. Upon the giving of this release the board delivered to complainants bonds amounting, at a discount of ten per cent., to $78,120.00, leaving still due, as bill claims, the sum of $132,815.00 in money, or, in bonds, the amount of $146,096.00. Complainants deny that the final estimates made by the first engineer contained any errors, and, according to the contract, this estimate was final and conclusive upon the board. After this last estimate was made and the last payment, and after the said release was executed, complainants induced the board to enter into another agreement, whereby it was agreed in writing under seal that complainants should select an engineer, who, together with the chief engineer of the board, B. Mickle, should select a third, and that the three should constitute a board of arbitrators to re-estimate the work
369 done, and settle all differences; and that if, by the award of this board, it was found that the levee board was indebted to complainants, the amount due should be paid to them, and all the expenses of the remeasurement; but if it was found that complainants had been overpaid, the amount so overpaid should be refunded; to secure which complainant deposited in Memphis, Tennessee, the sum of $25,000.00 in levee board bonds. Complainant selected George B. Fleece who, together with said B. Mickle, selected R. L. Cobb, and thus organized the board of arbitrators. Soon afterwards the levee board and complainants entered into another agreement, setting forth rules for the government of said board of arbitrators, and in this agreement it was stated that George B. Fleece, B. Mickle, and R. L. Cobb constituted said board. The arbitrators went to work, and so continued to discharge their duties for several days, when B. Mickle, from various pretexts, refused to proceed, and finally, together with the levee board, made it so disagreeable to R. L. Cobb that he withdrew from the board of arbitrators, and, although many names have been proposed, and every effort has been made by said Fleece and by complainants, B. Mickle cannot be induced to accept any substitute for R. L. Cobb. The board of arbitrators has, therefore, been broken up, and complainants have been forced to pay all the expenses, amounting to about $1,200.00, which they also ask to recover. The complainants claim, that by these last agreements all rights under the release executed by them have been waived and abandoned by the board. They also claim $9,750.00 for other extra work done not before mentioned.

370 Bill further alleges that the levee board has no resources other than the one million dollars of bonds authorized to be issued; that it has already issued about $800,000.00 of them, and are rapidly issuing and disposing of the balance; that said levee board is indebted to complainants in the sum of $157,000.00 in bonds, and ask that an injunction be issued restraining the board from issuing and disposing of

bonds to that amount. Bill further states that the $25,000.00 in bonds deposited in Memphis as aforesaid were placed in bank subject to the order of the levee board, and that, therefore, without its order complainants cannot recover them, and the board refuses to give this order.

Bill prays for process, the injunction mentioned above, and that the levee board be also enjoined from withdrawing from the bank the $25,000.00 in bonds, deposited in Memphis; that the board produce the originals of the contracts and estimates mentioned; and that an account between the board and complainants be taken and the board required to pay in bonds at a discount of ten per cent. the amount found to be due, etc.

The injunction was granted, but afterwards was dissolved upon the board's giving bond, which was accepted by the court.

A demurrer to this bill was overruled, whereupon the levee board and the commissioners named filed their joint answer, which is, in substance, as follows:

371 The work was to be paid for in bonds at par value, and not a 90c. on the dollar. Work was not done according to specifications, and a large part of it was done in such a manner that the engineer was not authorized to receive it. The estimates of the first engineer were incorrect and fraudulent; were in the interest of complainants and to prejudice of the levee board. After these estimates were made, and complainants had received the payments mentioned, it was agreed that B. Mickle, then engineer for the board, together with an engineer employed by complainants, should remeasure the work, and a settlement should be made upon the basis of their report, the two engineers having power to call in a third in case of disagreement. Comperfect harmony, made the remeasurement; but when it was discovered plainants employed one Flynn, and he and Mickle went to work, and, in that, by their estimate, complainants had been already overpaid, Flynn refused to sign the report. Defendants deny that anything is due complainants from them. Believing that the estimates of Kirkpatrick, the first engineer, were false, and made to defraud the board, said board employed a disinterested engineer, Mr. Hewson, to remeasure the work, and his estimate fell very far short of that of Kirkpatrick. Wishing to do full justice to complainants, the board then caused its own engineer, B. Mickle, to again go over the work, and notified complainants of the fact that he would do so, and requested them to have an engi-
372 neer there to assist him. This they failed to do, and said Mickle then remeasured the work, and, like Hewson, found that Kirkpatrick's estimates were incorrect, and made to defraud the board. Defendants deny that the release executed by complainants was given under duress, deny that it is invalid, or has ever been waived or abandoned. They deny all charges of bad faith in regard to the board of arbitrators mentioned in the bill; deny that said board was ever fully organized or formally recognized. Mickle declined to undertake the work, because the demands made by complainants were such as could not be allowed under their agreement. Defendants have been always ready, and are now ready, to carry out this agreement relative to the board of arbitrators. Defendants believe that complainants have been largely overpaid, and are therefore indebted to defendants for this amount overpaid, and also for damages caused by unsubstantial and defective work. They therefore refused to surrender the $25,000.00 of bonds deposited to their order in Memphis. Answer was filed April 2nd, 1873.

REPLICATION FILED.

To this answer replication was filed May 15th, 1873.

ORDER TO DEPOSIT BONDS WITH CLERK, ETC.

By an order of the court defendants were required to deposit with the clerk of the court the bonds on deposit in Memphis; and afterwards the clerk was ordered to deliver them to complainants.

CROSS-BILL, ETC.

373 On June 24th, 1875, a cross-bill was filed by defendants, stating that from the testimony taken in the cause it had been developed that while the contract between complainants and the levee board provided that complainants were to receive from 45c. to 65c. per cubic yard for the work to be done, that they had sublet the work, and what was done was actually done at a price ranging from 18c. to 26c. per cubic yard. That by the contract complainants were to be paid in bonds, complainants claiming at 90cts. on the dollar, and defendants claiming at par value. However this may be, the charter of the levee board only authorized the board to sell or negotiate the bonds, and expressly prohibits their being disposed of at a greater discount than ten per cent. The board therefore had no power to make a contract for work to be paid in bonds at a discount, and, even if it had, the greatest discount allowed would be ten per cent. on the money value of the work, which is shown to be much less than one-half of the valuation placed on the work in the contract. Cross-bill asks that the contract be declared void, an account ordered to be taken placing the work upon the footing of its money value, and complainants be ordered to repay the excess of bonds paid them by the board over what would cover the money value of the work done, payable in bonds at ten per cent. discount.

DEMURRER FILED TO CROSS-BILL, ETC.

To this cross-bill a demurrer was filed and by the court sustained.

374 BILL OF REVIVOR.

On 14th August, 1877, complainants filed their bill of revivor stating that by an act of the legislature the offices of commissioners, secretary, treasurer, and collector of said levee board, had been abolished, and the auditor and treasurer of the State were appointed the Levee Board of District No. 1, ex officio, and substitued as such commissioners; that W. H. Gibbs is auditor of public accounts and W. L. Hemingway is treasurer of the State of Mississippi. Bill asks that the cause be revived against them as constituting said levee board.

ANSWER TO BILL OF REVIVOR.

The answer of said Gibbs and Hemingway admits the facts stated in the bill of revivor, and adopts as their own the answer filed by the former defendants, April 3rd, 1873.

Afterwards, the term of office of said auditor and treasurer having expired, and Sylvester Gwin having been elected to succeed W. H. Gibbs as auditor, and W. L. Hemingway having been re-elected to the office of treasurer, the cause was again revived against said Hemingway and Gwin, as ex officio said Levee Board, and on June 17th, 1878, they filed their answer, adopting the original answer filed April 3rd, 1873, adding the allegation that the contract between complainants and the levee board was ultra vires and void.

CROSS-BILL OF DEFENDANTS.

On the same day said Hemingway and Gwin, as treasurer and auditor aforesaid, filed their cross-bill against Jeptha W. Stansell, surviving partner of Partee and Stansell, in which, after stating the
375 incorporation and organization of the levee board, gives a history of this cause and the contract and proceedings upon which it is based. They then claim that the contract, if ever entered into, was ultra vires and void; that by the act of the legislature creating the levee board it was expressly forbidden to dispose of the bonds at a greater discount than ten per centum, intending that the tax-payers should receive at least 90c. worth of work for every $1.00 in bonds issued and disposed of. That in order to evade this provision the price of the work was in the contract fixed at an amount greatly in excess of its money value, and was a fraud upon the people, and prohibited by the act. That at a fair valuation and upon a fair estimate of the work done said Partee and Stansell had been overpaid the large amount of $189,547.20 in bonds, about one-fifth of the whole amount authorized to be issued. That by the act of the legislature substituting said treasurer and auditor for said levee board, required that all monies, bonds, coupons, or assetts belonging to the levee board, should be turned over to said treasurer. They pray that complainants in the original bill shall be required to turn over to said Hemingway, as treasurer, etc., the excess of bonds they have received over and above what was fairly due them, and in default of such return a judgment shall be rendered against complainants in the original bill for the money value of the bonds at the time they were paid, with interest thereon.

376 ANSWER TO CROSS-BILL.

To this cross-bill, J. W. Stansell filed his answer setting out his cause in substance as it is given in the original bill of Partee and Stansell, and also denying that the contract was ultra vires or fraudulent, and denying that there was any effort to evade the provisions of any act of the legislature, or that there was any subterfuge resorted to for any purpose, states that the prices agreed to be paid were fair and just; that the board advertised for bids for the work, and the bid of Partee and Stansell was the most advantageous to the board received, and was therefore accepted and embodied in the contract. If the work could have been done for less, some one would have offered a better bid, and it would have been accepted; denies that they have been overpaid, and restating the estimates and prices agreed to be paid, claims a balance due him as surviving partner, etc., of $129,744.10 and interest; adopts for further the original bill of Partee and Stansell.

REPLICATION.

To this answer replication was filed October 19th, 1878.

HOLDING OF COURT—REFERENCE TO COMMISSIONER, ETC.

The cause came on to be heard June 18th, 1879, and the court, holding that said Stansell, as surviving partner, etc., was entitled to recover whatever balance was due under the contract mentioned, referred the cause to S. C. Lane, as commissioner, to ascertain and report the amount due. After giving credit for all payments to said Stansell.
377 The court ordered said commissioner to base his account upon the estimates made by Kirkpatrick; to give said Stansell credit for all costs paid by said Partee and Stansell on account of the board of arbitration mentioned, but as to some portions of the work (done under the Lindsley contract) to give the levee board credit for the bonds paid at their face value.

REPORT BY COMM'R AND MASTER.

On the same day the said Lane, as master and commissioner aforesaid, filed and rendered his report showing a balance due said Stansell, as surviving partner of Partee and Stansell, of
$109,988.41. $109,988.41; to which exceptions were filed by defendants.

FINAL DECREE.

And the cause again coming on to be heard, a final decree was rendreed by which the exceptions were sustained reducing the amount to $71,623.67, and the report, as amended, was confirmed, and a decree against said Levee Board of Mississippi in favor of said J. W. Stansell, surviving partner of Partee and Stansell, was rendered for the said
$71,623.67. sum of $71,623.67, with interest from the date of the decree, together with the cost of this suit.

APPEAL, ETC.

Wherefore, the appellants appeal from the whole of said decree of the district court of the United States, and respectfully pray that the decree of the said district court, and the bills, answers, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and
378 that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the district court and every part thereof may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

H. P. BRANHAM,
Solicitor for Appellants.

Appeal allowed.

The appeal prayed for in the foregoing petition is allowed, the petitioners having entered into bond with sureties as required by law.

R. A. HILL, *Judge.*

Filed Sept. 2nd, 1880. G. R. Hill, clerk.

Certificate.

UNITED STATES OF AMERICA,
Nort. Dist. of Miss., ss:

I hereby certify that the foregoing thirteen pages of manuscript, containing the copy of the petition for appeal to the Supreme Court in said cause is a true, perfect, & complete copy of the original petition as fully as appears from the original now on file in my office in said cause.

In witness whereof I hereunto set my hand and affix the seal of said court at my office, in said district, on this the 14 day of September, A. D. 1880.

[SEAL.] G. R. HILL,
Clerk of the District Court of the United States for said District.

379 Supreme Court of the United States.

In the district court of the United States for the northern district of Mississippi.

PARTEE & STANSELL
v.
LEVEE BOARD OF DISTRICT NO. 1 ET ALS.

Know all men by these presents that we, William L. Hemingway, treasurer of the State of Mississippi, and Sylvester Gwin, auditor of public accounts of said State, ex officio the Levee Board of District No. 1, principals, and Joshua Green and W. H. H. Green, sureties, are held & firmly bound unto Jepthal W. Stansel, surviving partner of the late firm of Partee & Stansel, of Helena, in the State of Arkansas, in the sum of five hundred dollars, to be paid unto said Stansel, his executors or administrators; to which payment, well & truly to be made, we bind ourselves & each of us, jointly & severally, and our & each of our successors, heirs, executors, & administrators. Sealed with our seals, and dated this the 27th day of August, 1880, A. D.

Whereas the above-named Hemingway & Gwin, board, &c., have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled cause by the dis-
380 trict court of the United States for the northern district of Mississippi:

Now, therefore, the condition of this obligation is such that if the above-named Hemingway & Gwin, or their suc'essors, board, &c., shall prosecute their said appeal to effect, and answer all costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force & virtue.

S. GWIN, *Aud.* [SEAL.]
WM. L. HEMINGWAY, [SEAL.]
Treasurer, &c.,
JOSHUA GREEN. [SEAL.]
W. H. H. GREEN. [SEAL.]

I approve the foregoing bond and sureties this Sept. 2d, 1880.
R. A. HILL, *Judge.*

(Indorsed:) No. 197. District court of the United States, northern district of Mississippi. Partee & Stansell vs. Levee Board of Miss., Dist. No. 1, & others. Bond for cost on appeal. Filed Sept. 2d, 1880. G. R. Hill, clerk.

381 UNITED STATES OF AMERICA,
Northern District of Mississippi:

In the district court of the United States.

PARTEE & STANSELL
v.
LEVEE BOARD OF DISTRICT NO. 1.

In the above-entitled cause I do hereby waive citation & notice of the appeal of the defendants to the Supreme Court of the United States at Washington, D. C., and agree that the clerk of said court may docket said cause and enter my appearance therein as counsel for the appellees, without any objection growing out of want of citation.

H. T. ELLETT,
Attorney of Record for Appellees.

382 *Opinion of the court on motion to dismiss, &c.*

In the district court of the United States for the northern district of Mississippi, June term, 1877.

PARTEE AND STANSELL
vs.
LEVEE BOARD, DISTRICT NO. 1.

The question now presented for consideration arises upon defendant's motion to dismiss complainant's bill for the reason alleged that, by an act passed by the legislature, approved April the 11, 1876, said levee board was abolished.

I have examined the act, and am of opinion that it was not the intention of the legislature to so abolish the levee board as to entitle the defendant to the motion, but only to change the officers, and perhaps to some extent limit its power, substituting the auditor and treasurer of the State for the former officers. Indeed, the act so expressly declares. These officers, ex-officio, are declared to constitute the Levee Board of Dist. No. 1, are put in charge of all the money, property, and all other esetts belonging to the board, and with the payment of its liabilities. No provision is made for the ascertainment of what is due to the board or due by it to others, than through the courts; and it is not to be presumed that the legislature intended to deprive any
383 of those claiming to be creditors of the board, or having any controversy with it from having their rights ascertained and enforced. For these purposes the corporation still exists and no change is made so far as its rights and liabilities are concerned, except that these State officers are made the officers of the corporation and charged with performing the necessary duties in relation to the same.

It is urged on behalf of the motion that these officers reside in Jackson, and keep their offices there; and hence, they being in another district, this suit can no longer be maintained here. I do not concur with the learned counsel in this view. There is no necessity for any new proceedings against them; it is the same corporation although managed by new officers who are held to take notice of all the affairs of the corporation including this suit. The solicitors who formerly defended it still defend it, and are supposed to inform these officers of the pendency of the suit, and all that is necessary to be done in it. The

process of this court extends to persons residing in the southern district. The corporation being in court must be held to remain here until the cause is in some way dispossd of. Without further comment, I am satisfied that the motion cannot be sustained. An order will be entered overruling the same and that complainants take further steps therein before the next term of this court or the bill will be dismissed for want of prosecution.'

R. A. HILL, *Judge.*

384 *Opinion of court on merits.*

In the district court of the United States for the northern district of Mississippi. June term, 1879.

J. W. STANSELL, SURVIVING PARTNER, }
vs. }
LEVEE BOARD, &C. }

This cause is submitted upon bill, cross-bill, answers, exhibits, and proofs, from which the following facts appear:

A' a result of the war, a portion of the levees upon *upon* the river-front on the Mississippi River were wholly destroyed and others greatly out of repair, so as to expose the lands between the river and high lands to numerous overflows, threatening to destroy them for agricultural purposes.

To remedy this evil the legislature, by an act approved 17 March, 1871, created the counties of Tunica, Coahoma, and portions of De Soto, Panola, and Tallahatchie into a levee district, designated as Levee District No. 1.

And further created a board of levee commissioners for the same, consisting of one member for each of said counties, who were charged with the duty of causing to be constructed new levees, when wasted away or otherwise needed, and to repair the old levees so as to
385 protect the lands embraced in the district so created from overflow.

To enable the board to perform the duties assigned it, authority was given to the board to issue interest-bearing bonds, to run not exceeding ten years, and for the payment of which a tax was laid upon the lands within said district, and with the further power to borrow money for said purpose, and to do and perform all other acts necessary to carry out the scheme so adopted for the purpose intended. The bonds so to be issued were to be made negotiable, and might be sold or otherwise used for the purpose of erecting and maintaining said levees, but, if sold, were not to be sold at a greater discount than ten per cent.

In pursuance of the power and authority vested in the board, a contract was entered into between the board and Partee & Stansell, of whom Stansell is surviving partner, for a large portion of the work required to be done, and for which they were to receive payment at specified rates, to be paid in said bonds. The written proposition made by Partee & Stansell was to take the bonds at 90 cents in the dollar, which proposition it seems was accepted by the board, but was at the time unintentionally omitted in the written contract, but was afterwards interlined in the written contract by order of the board.

The contract further provides that all the work was to be done under the direction of the chief engineer of the board, and who
386 was, by the contract, constituted the sole arbiter of all questions

of difference which might arise between the parties relative to the work to be done and the amount of compensation to be received for the same.

Partee & Stansell, by themselves and subcontractors, completed the work according to the contracts, and which the proof shows has since preserved the lands within the district from overflow.

After the completion of the work the board became dissatisfied with the estimates given by their chief engineer, and refused to settle thereby; a payment, however, was made, and a release of further demands was given, but under protest, and which was afterwards set aside and an agreement entered into, by which the matters in dispute were to be submitted to three engineers, one to be chosen by each party, who were to select a third. In pursuance to which, each party selected one, and a third was nominated by the engineer selected by Partee & Stancel, and not at the time objected to by the engineer selected by the board, and who together proceeded to the work, and entered upon the duties assigned them; but soon after which, for some reason not satisfactorially shown. Col. McKee, the board's engineer, refused to go on further with the measurement of the work and the
387 award, and it was abandoned, after which Partee & Stansell filed the original bill in this cause for a specific performance of the contract upon the part of the board, and, among other things, prayed that the board be enjoined from the issuance and disposal of other bonds until they shall have been paid the amount due them under their contract, the amount being limited to $1,000,000.00, and which upon bill and answer was granted since this order was made, and by an act of the legislature passed in 1876, the treasurer and auditor of the State have, ex officio, been created the successors of the former board, and the former board discharged. The successors having been made defendants to the original bill, have filed a cross-bill, in which they deny any indebtedness to Partee & Stansel, but insist that they have been largely overpaid, and pray for a decree against them for the same; the allegations of which are denied by the answer thereto.

The questions presented for determination are: first, is there anything due complainants, as survivor of Partee & Stansel, Partee having recently departed this life; and, if so, how much; or if, on the other hand, they have been overpaid; and, if so, how much?

The main ground urged against the claim of complainant is that
388 the act authorizing the issuance of the bonds contemplated that they should be considered in the use that might be made of them, in no case to be considered as of less value than 90 cents on the dollar, and that in the contract they were estimated as of greatly less value; in other words, that the estimates at which the work was to be paid in bonds greatly exceeded that for which it could be done, and was done, by the subcontractor for cash, and that the work should be estimated at cash prices and the bonds estimated at 90 cents on the dollar.

Whilst there is a great deal of plausibility in this position, I do not think it maintainable. There was a reason for prohibiting the board from selling the bonds at a greater discount than ten per cent., which did not permit their use in payment for work actually done at a higher rate than it could have been done for cash.

Without the restriction the board might have sold them at a ruinous discount and failed to apply the money as intended, as has often been done, and thus have defeated the whole purpose, and at the same time imposed a heavy debt upon the tax-payers, but when the bonds are applied to the payment for the work done, and the object is secured, the

same reasons did not apply. This is especially so when it is
389 plain that the bonds could not have been cashed on the market except at a heavy discount. Without the arrangement that was made it is clear to my mind that the work would not have been done, and that the district protected by these levees would before now in larg' part have been abandoned. The land-owners having received the benefits are now estopped from setting up this defence. This is especially so when we consider the purposes for which the board was created and the large powers conferred and necessarily so.

The first settlement made having been set aside, and the board having declined to proceed with the arbitration agreed upon, it is the duty of the court to ascertain the amount of work done, and the payment received under the contract, as shown by the pleadings and proof. When this is done, it will be seen whether or not anything is due to either party.

The difficulty is, at this distance of time since the work was done, in ascertaining from any measurement which can now be made what work was actually done. The contract confined both parties to the estimates made by the board's chief engineer, and, as he was selected by the board, Partee & Stansel having had no choice in his selection, the board is estop'ed from denying the correctness of his estimate
390 in the absence of clear proof of fraud or mistake upon his part, which is not shown. Therefore, I must hold that his estimates must be taken as the basis of the account. It may be unfortunate that his full estimates in detail cannot be had, but as he was the officer of the board, and as the estimates were made to the board, they are responsible for their non-production, and any difficulty arising from their absence cannot be visited upon the complainant. I am of opinion that, in the absence of clear proof that the allowance for shrinkage was omitted from his estimates, which I do not think appears, no deduction on this account should be allowed. I am also of the opinion that the work done by Partee & Stansell on the Willow Lake levee, under their assumption of the contract of Lindsley, or Taylor, Lindsley & Cage, should be paid at the face value of the bonds, unless clearer proof shall be adduced that the original contract under that payment was to be made at ten per cent. discount upon the bonds. As I am satisfied that under the circumstances the estimates of Kilpatrick, the chief engineer, must be taken as the basis of the account, the question as to how much was embraced under the Yazoo Pass estimates is immaterial. He must be considered as knowing at the time what the understanding of
391 the contract was. The result is that a reference must be had to a master, to take and state an account of the work done, and the amount paid therefor according to the rules stated, and as shown by the pleadings and proof, to be reported to the court for its future action thereon.

R. A. HILL, *Judge.*

Certificate.

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

I, George R. Hill, clerk of the district court of the United States for the Northern District of Mississippi, hereby certify that the immediately foregoing nine pages of manuscript contain a true & perfect copy of the two opinions of the court delivered in the case of Partee & Stan-

sel against the Levee Board of Miss., Dist. No. 1, & others, as fully as the same appears among the files in said cause in said court.

In testimony whereof I hereunto set my hand and affix the seal of said court, at my office in said district, on this the 14th day of September, A. D. 1880.

[SEAL.] G. R. HILL, *Clerk.*

(Indorsement on cover:) No. 593. William L. Hemingway, treasurer of the State of Mississippi; Sylvester Gwinn, auditor of public accounts of said State and ex-officio, The Levee Board of Mississippi, District Number One, appellants, vs. Jeptha W. Stansell, surviving partner of the late firm of Partee & Stansell. N. Mississippi D. C. U. S. Filed 4th October, 1880.